APPENDIX

Supreme Court, U.S.
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# In the Supreme Court of the United States

OCTOBER TERM, 1979

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No. 79-5269

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ROBERT EDWARDS, PETITIONER

*v.*

THE STATE OF ARIZONA, RESPONDENT

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*ON WRIT OF CERTIORARI TO*
*THE ARIZONA SUPREME COURT*

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**PETITION FOR A WRIT OF CERTIORARI**
**FILED AUGUST 28, 1979**
**CERTIORARI GRANTED MAY 19, 1980**

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[Caption omitted]

**MINUTE ENTRY**
**(March 11, 1977)**

UNDER ADVISEMENT RULING RE DEFT. EDWARDS' MOTION TO SUPPRESS:

IT IS ORDERED the motion is granted.

THE COURT FINDS that Deft. Edwards' statement was voluntary except for the violation of Miranda. The court is prohibiting the state from using the statement in the presentation of its case but the state may use the statements on cross-examination in the event Deft. Edwards takes the stand and the state may use the statement in rebuttal should it become otherwise material and proper rebuttal.

THE COURT FINDS that the officers' testimony is the credible evidence on the motion, not Deft. Edwards' testimony.

THE COURT FINDS that the deal referred to in the testimony, so far as Mr. Edward's state of mind is concerned, was that he would make a statement (presumably a true statement) in exchange for some leniency or something of that nature.

THE COURT FINDS that under Miranda and under the Sixth Amendment, there is at least an indication in some way that Mr. Edwards intended to have an attorney and intended not to make any statement until he was represented by counsel, the conversation between the officers and Mr. Edwards having been terminated by Mr. Edwards saying, in effect, that he would wait until he got his attorney begore he made any deal.

The court cites the Arizona cases it has studied in this regard: State v. Suave, State v. Edwards, State v. Berger.

[Caption omitted]

**MINUTE ENTRY**
**(March 14, 1977)**

RE STATE'S MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION TO SUPPRESS CONFESSION:

Mr. Lingeman files a written motion and counsel argue the motion to the court.

IT IS ORDERED the motion to reconsider is granted.

The court states that it was not aware of State v. Travis and it appearing that the case is exactly on point and is controlling,

IT IS ORDERED the ruling on the motion to suppress is changed and the Deft. Edwards' motion to suppress statements is denied as to all statements.

THE COURT FINDS the defendant's statements to be voluntary.

(CAPTION OMITTED)

No. A-30683

**MOTION TO SUPPRESS STATEMENT**

COMES NOW the defendant, ROBERT EDWARDS, by and through his attorney, HIRSH, SHINER & POLIS, P.C., and moves this Court to exclude the confession attributed to this defendant on the following grounds:

(1) That said confession was not made by this defendant.

(2) That the confession was made involuntarily by reason of threats and promises on the part of state agents. *Molloy v. Hogan*, 378 U.S. 1 (1964).

(3) That the confession was taken in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966) insofar as it was made at a time when defendant had no understanding of his Fifth Amendment privilege against self incrimination.

These grounds will be more fully articulated in a following memorandum in support of this motion.

(CAPTION OMITTED)

No. A-30683)

**MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS STATEMENT**

*MEMORANDUM OF POINTS AND AUTHORITIES*

On January 19, 1976 Defendant Edwards was arrested at his residence by Detective Bunting and Sergeant Bunting on charges of felony murder, armed robbery and armed burglary in connection with an incident alleged to have occurred on October 9, 1974. Later that day, Defendant Edwards gave a recorded statement to Sergeant Bunting denying any involvement in the occurrence in question. A transcription of this statement is included in the state's disclosure material.

The next day, January 20, 1976, Detective Marmion contacted the accused at the County Jail where the defendant was in custody. This contact took place at one of the attorney interview booths at approximately 9:15 A.M. During that interview, Detective Marmion attributes the following statement to Edwards:

> "Barfield was at Soto's residence approximately three or four days before the actual incident. Reed and Soto were talking about setting up the robbery. At that time Barefield decided to go along with them. On the night of the murder, October 9, 1974, at approximately 0030 hours Reed, Barefield, Soto and both Williams' arrived in the area of the La Conga. After the customers left the bar at approximately 0100 hours Manny Soto walked up to the window of the bar located on the southside and looked to see where the victim and Nellie Esparza were. Soto, Albert Williams and Willie Williams acted as look-outs. As the victim and Mrs. Esparza walked out the front door of the bar they were approached by Barefield and Reed. Reed was the only one carrying a gun. Both the victim and Mrs. Esparza were held at gun-point and were eventually forced back into the bar. Once inside Barefield stated he went to the victim's but did not

take anything from her. Shortly thereafter Reed fired two or three shots because the gun 'had a hair trigger on it'. Reed then took the victim back into the back room where the safe was at. Barefield stated Soto had told them where the safe was at because he had been in there once before while he committed a burglary at La Conga. Barefield denied hurting or knocking Mrs. Esparza to the floor. Barefield then grabbed Mrs. Esparza and took her into the back room where Reed had the victim at gun-point. The victim was sitting on a chair, he was bent over opening the safe. Reed threatened to kill the victim if he did not get the money out of the safe. Barefield also stated Reed was jabbing him in the rib area and had also jabbed the victim on the right neck area. Reed took the victim's watch, and ring off of his person. Barefield described the victim's ring as gold in color with a red ruby stone. Reed also took a metal box (money) out of the safe and two money bags. Barefield stated Reed kept possession of all the stolen items except the ring which he gave Barefield. The two suspects then ran from the bar and while they were running they were met by the other three suspects. The direction of travel the suspects took according to Barefield was consistent with what Reed had previously told me."

This statement was supposedly made after Detective Marmion played ten to twelve minutes of a recorded statement of codefendant Soto seriously implicating Edwards in the robbery in question. After the recording was played, Edwards allegedly agreed to make the aforementioned statement, but refused to have it recorded because he knew it would be used against him in Court at a Later time'. Defendant at this time allegedly had been advised of his Miranda rights and affirmatively stated he understood them.

## I.

## DEFENDANT EDWARD'S CONFESSION WAS OBTAINED IN VIOLATION OF MIRANDA V. ARIZONA

In leading case of *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966) holds that a statement elicited through

custodial interrogation is inadmissable at trial unless the state can show that the defendant was advised of his Miranda rights and validly waived them. Furthermore, the court in Miranda specifically held that a "valid waiver will not be presumed simply from the silence of the accused or simply from the fact that a confession was eventually obtained". *Miranda v. Arizona, supra,* 384 U.S. at 475. Emphasizing the importance of the requirements spelled out in its opinion, the court concluded that:

> "The requirement of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privilege and not simply a preliminary ritual to existing methods of interrogation." *Id.* at 384 U.S. 476.

Defendant here does not contest the fact that he was advised of his rights after he was arrested. Instead, it is defendants position that he did not validly waive his rights and that, therefore, his statement was involuntarily made and was elicited in violation of the dictates of *Miranda v. Arizona, supra.* The invalidity of the waiver in this case is manifested by the interrograting officers admission that defendant Edwards would not agree to a tape recording of the confession attributed to him because they could use it against him if it were tape recorded.

This refusal is analogous to the refusal made by the defendant in *United States v. Frogier,* 419 F. 2d 1161 (D.C. Cir. 1969) which held that a defendant's objection to note taking by officers before confessing rendered invalid a written waiver signed by the defendant. This holding was predicated on the reasoning that Frozier's ban on note taking indicates an unintelligent waiver of his rights under Miranda. In like fashion, defendant Edwards refusal to give a taped statement indicates that any waiver of his Miranda rights is undermined by the fact it was unintelligently made. *Accord, State v. Jones,* 37 Ohio State 2d. 21, 306 N.E. 2d 409 (1974).

(CAPTION OMITTED)

No. A-30683

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS STATEMENTS**

*MEMORANDUM OF POINTS AND AUTHORITIES*

I.

DEFENDANT EDWARDS' ORAL CONFESSION WAS OBTAINED DURING AN INTERROGATION SESSION CONDUCTED AFTER DEFENDANT EDWARDS HAD INVOKED HIS PRIVILEGE AGAINST SELF-INCRIMINATION AND ASKED FOR AN ATTORNEY. THEREFORE, THIS CONFESSION WAS OBTAINED INVOLUNTARILY AND IN VIOLATION OF DEFENDANT'S 5TH, 6TH, AND 14TH AMENDMENT RIGHTS. *MIRANDA v. ARIZONA*, 384 U.S. 436, 86 S.Ct. 1602 (1966).

On January 19, 1976, Defendant Edwards was arrested at his home by Detective Bunting and Sargeant Bunting on charges of murder, armed robbery and armed burglary in connection with an incident alleged to have occurred on October 9, 1974. Later that afternoon, defendant Edwards volunteered a recorded statement denying any involvement in the occurrance at question. This recorded statement, which is transcribed in the State's disclosure, indicates that Detective Bunting engaged into a searching inquiry into the particulars of defendant Edwards' recorded statement relative to an alibi.

After this statement was made the tape recorder was turned off and questioning continued. According to Sgt. Bunting, defendant stated that he wanted to make a deal but after negotiations broke down, defendant stated that he would get himself a lawyer and then make a deal.

During these negotiations, Detective Bunting indicated to defendant Edwards that if he wanted to make a statement, Detective Bunting would listen to it and then con-

sider whether a deal was to be made. In response to that, Edwards stated, according to Detective Bunting, that he was not going to make a statement, that he wanted a deal, and when Detective Bunting refused to make an offer, negotiations finally terminated.

It should be noted here that during the course of this interrogation session, Detective Hallums also talked to defendant Edwards, but again, defendant Edwards made no statements. Finally, after the termination of negotiations on January 19, 1976, defendant Edwards was transported to the County Jail.

The next day, January 20, 1976, Detective Victor Marmion went to the jail to interrogate defendant Edwards. During this interrogation session, Detective Marmion confronted Edwards with a tape-recording made by co-defendant Soto implicating defendant Edwards in the crime at issue. Simultaneously, he advised defendant Edwards of his Miranda rights and defendant Edwards allegedly responded that he would make a statement but that he did not want to have it recorded. According to Detective Marmion, defendant Edwards then proceeded to make what amounts to an oral confession concerning his involvement in the crime in question.

In *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966), the United States Supreme Court outlined the procedure that police must follow once they have advised the defendant of his *Miranda* rights.

> "If the individual indicates in any manner at any time prior to or during questioning that he wishes to remain silent, the interrogation must cease. At this point, he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice and producing a statement after the privilege has been once invoked." 384 U.S. at 473–74, 86 S.Ct. at 1627–28.

Following the Miranda decision, the United States Supreme Court in *Michigan v. Moseley*, ____ U.S. ____, 96 S.Ct. 321 (1975), reaffirmed the holding in *Miranda* and stated that the admissibility of a statement obtained after the in-custody defendant had exercised his *Miranda* rights depends upon whether his right to cut off questioning was "scruplulously honored". In *Mosely* the defendant, after being advised of his rights, stated he did not want to answer any questions about some specific crimes under investigation. All questioning ceased. Later, the accused was interrogated by another detective and again advised of his *Miranda* rights. This interrogation related to a homocide, a case indepedent of those about which the accused was questioned in the first interrogation session. This time, the accused elected to answer questions. This statement was held to be admissible because the second interrogation session did not undercut the accused previous decision not to answer questions concerning particular offenses.

In *State v. Sauve*, 112 Ariz. 576, 544 P.2d 1091 (1976), the Arizona Supreme Court distinguished *Mosely* in a case where multiple interrogation sessions resulted in the police obtaining a confession from the accused. In *Sauve, supra*, the defedant was arrested, given his *Miranda* warning and subjected to interrogation. After defendant was given his *Miranda* warning, he was asked whether he wanted to talk about the alleged crime and responded "no". However, after one of the detectives pointed to a box containing items taken in the burglary and stated that he had a good case against the defendant, defendant allegedly orally admitted that his fingerprints could be found on the stolen property. Under these circumstances, the Arizona Supreme Court held that the officer's actions undercut the defendant's previous decision to invoke his *Miranda* rights and that, therefore, the statements were not admissible. *State v. Sauve, supra*, at 579.

The facts of this case are even more compelling on the issue of whether defendant's statement was voluntered and hence, admissible. Defendant Edwards at the first in-

terrogation session, agreed to have his alibi statement recorded. After this statement was made and recorded, negotiations were undertaken to determine whether a "deal" could be made. When negotiations broke down, defendant Edwards refused to make a statement. Furthermore, he stated that he would wait until he got an attorney until he made a deal, thereby implying that he requested the services of an attorney before proceeding with any further interrogation by the police. In the face of defendant's refusal to make a statement concerning any involvement he had in the offense and his desire to speak with an attorney, the interrogating officers decided to transport him back to the jail. The next day, another detective from the homocide division went to the jail to interrogate defendant Edwards. First, he read him his *Miranda* rights. Then he proceeded to play a tape recording of a confession of a co-defendant implicating defendant Edwards in the crime at issue. Immediately after the playing of this tape, defendant Edwards allegedly orally confessed to the crime at issue, although it is clear from the State's disclosure that he refused to have this statement tape recorded and believed that this statement, if indeed made, was not admissible against him.

Under these circumstances, it is clear that this subsequent interrogation session undercut defendant's previous decision to invoke his Miranda rights under the 5th, 6th and 14th Amendments and, for that reason, the oral confession atttributed to him must be held inadmissible at his trial. *State v. Sauve, supra.*

(CAPTION OMITTED)

NO. A-30683

**OPPOSITION TO DEFENDANTS' MOTION TO SUPPRESS**

COMES NOW the State of Arizona, by and through the Pima County Attorney, STEPHEN D. NEELY, and his Deputy, LARRY J. LINGEMAN, and respectfully opposes defendants' motions to suppress for the reason that they inaccurately and inadequately set forth the facts upon which the motion can be made.

Respectfully submitted this 4th day of January, 1977.

(CAPTION OMITTED)

NO. A-30683

**MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION TO SUPPRESS CONFESSION**

COMES NOW the State of Arizona, by and through the Pima County Attorney, STEPHEN D. NEELY, and his deputy, LARRY J. LINGEMAN, and moves this Court to reconsider its decision granting the defendant's motion to suppress for the reason that the State's attorney has found a case which specifically deals with the problem before the Court in this motion, *State v. Travis*, 26 Ariz. App. 24 (1976).

Respectfully submitted this 11th day of March, 1977.

(CAPTION OMITTED)

No. 3957

HAYS, Justice

This is an appeal by Robert Edwards from his convictions of robbery, burglary, and first degree murder, and from his sentence of death for the murder conviction. We have jurisdiction pursuant to article 6, § 5 of the Arizona Constitution and A.R.S. § 13-4031. We affirm the convictions and sentences for robbery and burglary, and the murder conviction, but remand the murder conviction for resentencing.

We are presented with nine issues on appeal:

1. Whether Edwards' confession was admissible;
2. Whether, in deference to Edwards' right to a speedy trial, the state must forego its right to file a special action when a speedier alaternative is available;
3. Whether Edwards' right to a speedy trial was violated;
4. Whether Edwards' trial in prison garb, over his objection, violated his right to due process;
5. Whether the preclusion of a defense witness was an abuse of discretion;
6. Whether the prosecutor's statements in his closing argument constituted an impermissible comment on Edwards' failure to take the stand;
7. Whether an unintended or accidental death may be the basis for a felony murder conviction;
8. Whether A.R.S. §13-1641 (now renumbered as § 13-116) precludes conviction and punishment for robbery and burglary in addition to first degree murder when the latter is a felony murder; and
9. Whether there was sufficient evidence of causation in the record to support the felony murder conviction.

In October, 1974, a bar in Tucson was robbed at gunpoint. During the robbery the proprietor suffered a fatal heart attack. After obtaining some money and valuables the robbers fled. The police investigated the crime but soon exhausted all leads. In January, 1976, they obtained information that led to the arrest of Edwards and several co-conspirators. Edwards was subsequently convicted of robbery, burglary, and first degree murder.

## CONFESSION

Edwards was arrested at his home at 4:00 P.M. He was not read the *Miranda*[1] warnings at that time nor did he make any statements, but was taken to the police department where he was read his rights. He indicated he understood them and that he would submit to questioning. After again having his rights explained to him, he was interrogated by a detective who told him that a co-conspirator had implicated him in the robbery of a Tucson bar. Edwards denied involvement and gave a taped alibi statement, at the beginning of which he was again read his rights. After the statement, he asked the detective if he could make a deal. The detective replied that he wanted a statement but that he could make no deals. Consequently, Edwards asked to talk to the county attorney about making a deal, which he was allowed to do. The negotiations were unsuccessful. Edwards then reapproached the detective about a deal. The detective repeated his earlier statement that he could make no deals, to which Edwards replied, "I want an attorney before making a deal." He did not indicate, however, nor did the detective interpret his statement to mean that he wanted an attorney before further interrogation or that he wished to remain silent thereafter. The detective, nevertheless, ceased questioning immediately after Edwards' statement at about 6:30 P.M. Thereafter, Edwards was taken to the county jail.

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[1] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

At 9:15 the next morning two other detectives arrived at the jail and asked to see Edwards. Although they were from the same section as the detective who had questioned Edwards the day before and knew that he had been questioned, they did not know that he had made the statement about an attorney. When the detention officer told Edwards that the detectives were there to see him, he told the officer that he did not wish to speak to anyone. The officer told him that he had to. Edwards was thereupon taken to see the detectives. They identified themselves and said they wanted to talk to him. At that point they explained to him that he had the right to remain silent and the right to an attorney and the other *Miranda* rights. Edwards said that he was willing to talk to them but that he first wanted to hear the taped statement of his co-conspirator that the detective had told him about the day before. After a portion of the tape was played, he told the detectives that he would make a statement but that he did not want it recorded becuase it could be used against him in court. The detectives throughly explained that whether or not the statement was recorded did not matter because an oral statement could also be used against him in court. Edwards replied "I'll tell you anything you want to know, but I don't want it on tape." Edwards then gave a statement indicating his involvement in the robbery. The interrogation concluded at 10:30 A.M. Prior to trial, Edwards moved to suppress the confession and a hearing was held. The court found that the statement was voluntarily given but that the detectives violated *Miranda* when they reapproached Edwards after his statement about an attorney. However, the next day the judge reversed his ruling based on State v. Travis, 26 Ariz. App. 24, 545 P.2d 986 (1976), and found the confession to be admissible substantively.

Edwards claims on appeal that he exercised both his right to an attorney and his right to remain silent, that he did not subsequently waive either right, and that in any case his statement was not intelligently made and was therefore involuntary. First, we must determine whether, having initially waived his rights, Edwards adequately re-

claimed them by declaring that he would wait to talk to an attorney before making a deal.

*Invocation of Previously Waived Miranda Rights*

Miranda v. Arizona, 384 U.S. 436, 444–45, 86 S.Ct. 1602, 1612, 16 L.Ed. 2d 694, 706–07 (1966), holds that if a defendant indicates "in any manner" that he wishes an attorney before speaking or that he does not wish to be interrogated further, questioning must cease. Edwards points to this language in *Miranda* and argues that his statement was adequate to raise both his right to an attorney and his right to remain silent.

The state argues, however, that by stating he wanted to see an attorney before making a deal, Edwards was not raising his right to an attorney as such, nor saying that he wished to remain silent, but only asserting that he wanted to see an attorney before talking anymore about a deal. For this proposition, the state relies on State v. Travis, *supra*. There, after the defendant had been arrested and read his rights, he made equivocal statements about desiring an attorney. A detective asked him if he would submit to a breathalyzer test and allow the interview to be recorded. The defendant responded that he wanted to seek the advice of counsel before granting either request. The detective then told him that his wife had died and that he would now be charged with first degree murder. The defendant broke down and confessed his involvement. In ruling that his confession was admissible, the court reasoned that the defendant never made a definite statement to the effect that he either wanted to talk to an attorney before answering questions or preferred that questioning cease. *Id.* at 29, 545 P.2d at 991.

Notwithstanding the "in any manner" language of *Miranda, supra,* we are convinced that *Miranda* was not intended to require that every reference to an attorney, regardless of its ambiguity, must be construed as an invocation of the *Miranda* rights.[2] We think *Travis* is correct

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[2] *Miranda* itself would seem to concede as much by indicating its approval of the policy of the Federal Bureau of Investigation that the

in looking at a statement in the context made and attempting to determine whether it is sufficiently clear to be fairly interpreted as a request for an attorney or a demand that interrogation cease. There is much authority in support of this view. *See, e.g.*, United States v. Rodriguez-Gastelum, 569 F.2d 482, 484 (9th Cir.), *cert. denied*, 436 U.S. 908, 98 S.Ct. 2266, ___ L.Ed.2d ___ (1978); United States v. Tokoph, 514 F.2d 597, 605 (10th Cir. 1975); United States v. Howard, 470 F.2d 406, 407-08 (D.C. Cir. 1972); State v. Knapp, 114 Ariz. 531, 538, 562 P.2d 704, 711 (1977), *cert. denied*, ___ U.S. ___, 98 S.Ct. 1458, ___ L.Ed. 2d ___ (1976); State v. Garrison, 519 P.2d 1295, 1300-01 (Or. App. 1974).

Applying this reasoning in an evaluation of Edwards' statement, it appears at first blush that the state's argument is correct, *i.e.*, that Edwards was saying that he desired an attorney only if a deal was discussed further. However, looking at the statement in the context made, we find such an interpretation erroneous.

To accept the state's position in this case and allow Edwards' confession to stand while holding that he asked for an attorney for the limited purpose of making a deal would be illogical. Edwards wanted an attorney before making a deal. His part of the deal would have been his confession. Therefore, to allow him to make a confession without counsel would be to deny him his right to counsel for the very purpose, albeit limited, for which it was invoked. Likewise, it would be just as illogical to hold that his statement was enough to invoke his right to remain silent only if questioned about a deal. We hold therefore, looking at Edwards' statement in the context made, that although it was equivocal, its meaning was sufficiently clear and therefore it must be interpreted as a request for counsel and as a request to remain silent until counsel was present.

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initial decision as to whether, in an ambiguous statement, the defendant has asked for an attorney is for the agent on the scene. *See* 384 U.S. at 485-86 & n. 55, 86 S.Ct. at 1633-34 & n. 55, 16 L.Ed.2d at 729-30 & n. 55.

We must now determine whether, after invoking his right to counsel and right to remain silent, Edwards waived them. Our discussion at this point is twofold: first, whether *Miranda* creates a per se rule against waiver of the right to an attorney or the right to remain silent after being invoked; and whether the waiver, if constitutionally permissible, was voluntary.

*Per Se Rule Regarding Right to Attorney*

Edwards argues that *Miranda* creates a per se rule that once a defendant invokes his right to counsel he may not then be questioned again by police until an attorney is present. We do not agree. Although *Miranda* does require that questioning cease after a defendant asks for an attorney, we do not believe it precludes the defendant from changing his mind either on his own or in response to an inquiry by police so long as the decision is voluntarily made. We agree with the Ninth Circuit decision in United States v. Rodriguez-Gastelum, 569 F.2d 482 (9th Cir.), *cert. denied*, 436 U.S. 908, 98 S.Ct. 2266, ____ L.Ed. 2d ____ (1978), that per se rules often cause a court to lose touch with the purpose behind the rules. The goal of *Miranda* is to insure that the right to an attorney and the right to remain silent are not reduced to meaningless phrases as the result of overzealous police practices. 384 U.S. at 444, 86 S.Ct. at 1612, 16 L.Ed. 2d at 706. However, "a blanket prohibition against the taking of voluntary statements or a permanent immunity from further interrogation, regardless of the circumstances, would transform the *Miranda* safeguards into wholly irrational obstacles to legitimate police investigative activity and *deprive suspects of an opportunity to make informed and intelligent assessments of their interests.*" (Emphasis added.) Michigan v. Mosley, 423 U.S. 96, 102, 96 S.Ct. 321, 326, 46 L.Ed.2d 313, 320 (1975). Reading *Miranda* to create such a per se rule would preclude a defendant, upon intelligent reflection, from voluntarily and knowingly acting as he thinks best. It would work to "imprison a man in his privileges." Adams v. United States *ex rel.* McCann, 317 U.S. 269, 280, 63 S.Ct. 236, 242, 87 L.Ed. 268, 275

(1942). We therefore hold, as did the Ninth Circuit in Rodriguez-Gastelum, *supra*, that *Miranda* does not create a per se rule precluding a defendant from initiating further discussions with police or from responding to subsequent inquiries from police after the right to an attorney has been invoked so long as the waiver is otherwise voluntary.

*Per Se Rule Regarding Right to Remain Silent*

Edwards also claims that *Miranda* creates a per se rule against questioning by police after the defendant has invoked his right to remain silent. We previously rejected this assertion in State v. Hatton, 116 Ariz. 142, 568 P.2d 1040 (1977), where the defendant, having invoked his right to remain silent, was twice reapproached by the police and interrogated. Citing Michigan v. Mosley, 423 U.S. 96, 102-03, 96 S.Ct. 321, 326, 46 L.Ed. 2d 313, 321 (1975), for the proposition that *Miranda* cannot be interpreted to "create a per se proscription of indefinite duration upon any further questioning by any police officer on any subject," we held that the questioning of the defendant by police was permissible since the defendant's right to cut off questioning was scrupulously honored. 116 Ariz. at 146, 568 P.2d at 1044. We find *Hatton* controlling. Since, as in *Hatton*, Edwards was reminded of his *Miranda* rights and was asked by the detectives if he would voluntarily make a statement, we conclude that his right to cut off questioning was scrupulously honored.

*Voluntariness of Waiver*

Finally, Edwards claims that his confession was involuntary since it was not knowingly made. In Arizona, confessions are prima facie involuntary and the burden is on the state to show by a preponderance of the evidence that the confession was freely and voluntarily made. State v. Hall, ____ Ariz. ____, 586 P.2d 1288 (1978). In determining the voluntariness of a confession, the trail court must look to the totality of the circumstances surrounding the confession and decide whether the defendant's action is knowing and intelligent and whether his will has been overborne. Schneckloth v. Bustamonte, 412 U.S. 218, 226, 93 S.Ct.

2041, 2047, 36 L.Ed. 2d 854, 862 (1973); State v. Knapp, 114 Ariz. 531, 562 P.2d 704 (1977), *cert. denied*, ____ U.S. ____, 98 S.Ct. 1458, ____L.Ed. 2d ____ (1978). Once the court finds, as it did in this case, that the confession is voluntary, the finding will not be upset on appeal absent clear and manifest error. State v. Edwards, 111 Ariz. 357, 361, 529 P.2d 1174, 1178 (1974). We find no such clear and manifest error.

Edwards claims that his comment "I'll tell you anything you want to know, but I don't want it on tape" reveals his misunderstanding of the use of the confession he gave and that therefore it was not knowingly given. The state argues that the admissibility of an oral statement was thoroughly explained and that he refused to have it recorded for reasons of his own, *i.e.*, because of the impression he received after just having listened to his co-conspirator's taped confession. In any case, recognizing that the trial court found that Edwards' statement was voluntarily and knowingly made, and applying the rules of law set out above, we cannot say that the courts finding was clearly and manifestly erroneous.

In conclusion, we find that Edwards did invoke his right to an attorney and his right to remain silent even though his statement was not altogether clear. We also find, however, that the question whether he waived them is not amenable to a per se rule and thus is left to the trial court whose decision must be guided by the rules for determining voluntariness. The trial court's finding that the waiver and confession were voluntarily and knowingly made is upheld.

*Written Waiver Requirement*

Edwards claims that even if he did waive his *Miranda* rights, 17 A.R.S. Rules of Criminal Procedure, rule 6.1(c), indicates that a waiver of the right to counsel is ineffective unless made before a judge and in writing. We do not agree.

Although rule 6.1 can be read as Edwards reads it,[3] it was not intended to require judicial presence and written waiver of counsel before custodial interrogation nor have we ever required such in order for the defendant to waive his right to an attorney during custodial interrogation. *See, e.g.*, State v. Hall, ____Ariz. ____, 586 P.2d 1288 (1978); State Ferguson, 119 Ariz. 55, 579 P.2d 559 (1978); State v. Arnett, 119 Ariz. 38, 579 P.2d 542 (1978); State v. Ramirez, 116 Ariz. 259, 569, P.2d 201 (1977); State v. Hatton, 116 Ariz. 142, 568 P.2d 1040 (1977); State v. Knapp, 114 Ariz. 531, 562 P.2d 704 (1977), *cert. denied*, ____ U.S. ____, 98 S.Ct. 1458, ____ L.Ed. 2d ____ (1978); State v. Jenkins, 111 Ariz. 13, 522 P.2d 1090 (1974). We therefore hold that rule 6.1(c) does not require that a waiver of a defendant's right to an attorney at custodial interrogation be in writing or before the court.

## SPEEDY TRIAL

Edwards raises two distinct arguments regarding his right to a speedy trial: first, that the state is required by 17 A.R.S. Rules of Criminal Procedure, rule 8, to forego

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[3] 17 A.R.S. Rules of Criminal Procedure, rule 6.1, provides in relevant part:

> a. Right to be Represented by Counsel. A defendant shall be entitled to be represented by counsel in any criminal proceeding, except in those petty offenses such as traffic violations where there is no prospect of imprisonment or confinement after a judgment of guilty. The right to be represented shall include the right to consult in private with an attorney, or his agent, as soon as feasible after a defendant is taken into custody, at reasonable times thereafter, and sufficiently in advance of a proceeding to allow adequate preparation therefor.
>
> * * *
>
> c. Waiver of Rights to Counsel. A defendant may waive his rights to counsel under (a) and (b), in writing, after the court has ascertained that he knowingly, intelligently and voluntarily desires to forego them. When a defendant waives his rights to counsel, the court may appoint an attorney to advise him during any stage of the proceedings. Such advisory counsel shall be given notice of all matters of which the defendant is notified.

use of a special action when another procedural option is available whether or not the trial proceedings have been stayed; and second, that the delay with its allegedly resulting prejudice denied him his sixth amendment rights.

*Rule 8 Violation*

Edwards was arraigned on January 23. On March 5, Edwards moved for a redetermination of probable cause. The court granted the motion on March 22 finding that the state had failed to reveal all exculpatory information in its possession to the grand jury, but also finding that the state had not acted in bad faith. At that point, the state could have reindicted Edwards or it could have challenged the trial court's ruling by special action. It chose the latter alternative by filing a motion to stay and a special action. The court of appeals granted the stay but denied relief and later denied a motion for rehearing. The state then petitioned this court for review which was denied on July 20. On July 30, Edwards was reindicted following a determination by the grand jury that probable cause existed.

Edwards argues that the state should simply have reindicated him pursuant to the trial court's order rather than seeking appellate relief and that since it chose the more time-consuming procedure, the resulting period of delay (about four months) should be included in the rule 8 speedy trial time periods time periods. We do not agree for two reasons.

First, there was a stay in effect during the period of the appeal that necessarily halted all proceedings in the trial court. Such a period is excluded time under rule 8. State v. Steele, 23 Ariz. App. 73, 76, 530 P.2d 919, 922 (1975). Second, to require the state to employ the less time-consuming procedure when another is authorized by law would deprive the state of a legitimate remedy. Where, as here, there is no showing that the state's action was frivolous or taken in bad faith with intent to delay the defendant's trial, we think a rule limiting the options available to the state is wholly inappropriate. Computing the time involved while excluding the time taken by the appeal, the defendant had not, as of the date of his reindict-

ment, been denied a speedy trial inviolation of rule 8. Finding that no violation had occurred to that point, and noting that the speedy-trial limits begin again following reindictment, State v. Soto, 117 Ariz. 345, 348, 572 P.2d 1183, 1186 (1977), and since Edwards alleges no subsequent speedy-trial violation unless the earlier period is included, we find that rule 8 was not violated.

*Sixth Amendment Speedy-Trial Violation*

Edwards alleges that he was denied his constitutional right to a speedy trial by his lengthy incarceration while awaiting trial. He was arrested on January 19, 1976 and finally went to trial on March 17, 1977, a delay of 14 months. In State v. Soto, 117 Ariz. 345, 572 P.2d 1183 (1977), we held that a delay of nine months was sufficient to trigger further inquiry into the trial delay. That inquiry focuses on four factors set out by the Supreme Court in Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 83 L.Ed. 2d 101 (1972);

1. The length of the delay.
2. The reasons for the delay.
3. The defendant's assertion of his right
4. The prejudice caused the defendant.

Of these factors, the first is least important while the last is most important. State v. Soto, *supra*.

*Delay*

A 14-month delay seems to be excessive, but without looking into the reasons for the delay, we cannot conclude that the delay was prejudicial per se.

*Reason for Delay*

Only four months of the 14-month delay was caused by the state. Edwards claims that the state should be chastised for using four months to appeal an order when it could have simply reindicted as it ultimately was required to do. He cites United States v. Perry, 353 F. Supp. 1235, 1237 (D.D.C. 1973), as authority for his position. There, the court did criticize the prosecution for delaying trial, but because it had taken fourteen months for appeals which could have been completed in four (as they were

here), not because the state had chosen to appeal. On the other hand, in United States v. Osuna-Sanchez, 446 F.2d 566 (9th Cir. 1971), *cert. denied*, 404 U.S. 1022, 92 S.Ct. 698, 30 L.Ed.2d 672 (1972), the court looked at the diligence of the prosecution in the appeal process and held that a six-month delay because of the appeal did not violate the defendant's right to a speedy trial.

Edwards attempts to distinguish *Osuna-Sanchez*, *supra*, and similar cases, *e.g.*, People v. Stewart, 61 Mich. App. 167, 232 N.W.2d 347 (1975), that approve the use of interlocutory appeals by the state by pointing out that these cases involve appeals from trial court orders suppressing prosecutor's evidence and were therefore absolutely necessary to the prosecution's cases. We are not inclined to accept this distinction nor hold that the state's right to challenge an adverse trial court ruling by special action prior to a criminal trial is limited to those situations in which it is absolutely necessary, at least in the absence of any evidence in the record to show that the appeal was frivolous or taken in bad faith with the intent to delay the trial.

*Defendant's Assertion of Right*

Although the state argues to the contrary, we find after examining the record that Edwards did adequately and repeatedly assert his right to a speedy trial.

*Prejudice to Defendant*

Edwards claims that he was prejudiced by the delay because he was not able to locate two alibi witnesses essential to his defense. We do not believe the record supports Edwards' claim of prejudice for the following reasons. Edwards made no offer of proof to the court of the alleged testimony of the alibi witnesses had they been located. Nor did he show that the witnesses would have been available if the state had not delayed the trial for four months. He called one alibi witness in whose *sole* presence he claimed he was during the robbery. He was granted numerous continuances in order to locate the witnesses and the court issued several requests for attendance of witnesses to one state in which it was thought the witnes-

ses were residing. The state had never interviewed the witnesses nor did it know where they lived.

Although we recognize that these witnesses may have aided Edwards at trial, we cannot say that their absence prejudiced him to such an extent that he was denied a fair trial. He is, after all, entitled to a fair trial, not a perfect one. Bruton v. United States, 391 U.S. 123, 135, 88 S.Ct. 1620, 1627, 20 L.Ed. 2d 476, 484 (1968). Since the court and the state did everything they could have done to locate the witnesses and since Edwards did not show that the witnesses would have been available without the delay caused by the state, we find that Edwards was not unduly prejudiced as a result of the delay. *See* State v. Watson, 114 Ariz. 1, 6, 559 P.2d 121, 126 (1976), *cert. denied*, 430 U.S. 986, 97 S.Ct. 1687, 52 L.Ed.2d 382 (1977); Sigard v. State, 537 S.W. 2d 736,739 (Crim. App. Tex. 1976).

Edwards also alleges other bases for prejudice. We have reviewed these claims and find them equally without merit. Therefore, having considered all the factors required by Barker v. Wingo, *supra*, we conclude that Edwards' constitught to a speedy trial was not violated.

**PRISON GARB**

Edwards claims he was denied the due process right to a presumption of innocence by being tried in prison garb, citing Estelle v. Williams, 425 U.S. 501, 96 S.Ct. 1961, 48 L.Ed.2d 126 (1976). In *Estelle*, the Supreme Court held that an accused may not be compelled against his will to go to trial in identifiable prison garb. Edwards' reliance on *Estelle* is misplaced. *Estelle* deals with the case in which the defendant was tried in *identifiable* prison garb. There is no indication in the record that Edwards' prison clothes were identifiable as such. No effort was made by defendant to make an offer of proof as to the identifiable nature of his clothes. It is well-settled law in Arizona that where the record is silent, the missing facts will be presumed to support the conviction. *E.g.*, State v. Caldwell, 117 Ariz. 446, 468, 573 P.2d 864, 868 (1977); State v. Williams, 113

Ariz. 442, 444, 556 P.2d 317, 319 (1976); State v. Bojorquez, 111 Ariz. 549, 553, 535 P.2d 6, 10 (1975).

## PRECLUSION OF DEFENSE WITNESS

During the trial, Edwards attempted to call a witness that would have testified that he was intoxicated at 6:00 P.M., the night before the robbery. Even though Edwards was aware of both the witness and the intoxication defense long befgore trial, neither had been disclosed to the state. The state objected not only because Edwards had known of the witness and of the new defense before trial and had not disclosed them, but also because it believed that testimony of intoxication at 6:00 P.M. was not relevant to the defendant's participation in a robbery at 1:00 A.M. the next morning, seven hours later. The court excluded the witness as a sanction for Edwards' nondisclosure. Edwards argues that exclusion of the witness was an abuse of discretion by the trial court. We disagree.

We have repeatedly held that the imposition of a sanction pursuant to 17 A.R.S. Rules of Criminal Procedure, rule 15.7, is within the sound discretion of the trial court, and absent a showing of prejudice this court will not find an abuse of discretion. State v. Ramirez, 116 Ariz. 259, 268, 569 P.2d 201, 210 (1977); State v. Clark, 112 Ariz. 493, 495, 543 P.2d 1122, 1124 (1975). The prejudice must be such that the defendant has been denied a fair trial. *See* State v. Dorow, 116 Ariz. 294, 295, 569 P.2d 236, 237 (1977).

We do not believe that Edwards was prejudiced by the preclusion of the witness to such an extent that he was denied a fair trial. The testimony that he saw Edwards intoxicated some seven hours before the crime, although probably admissible, was not so dispositive that its absence denied Edwards a fair trial.

## CLOSING ARGUMENT

As the prosecutor began his closing argument he wrote on a chalk board, "Defendant confessed." At the beginning

of Edwards' closing argument, Edwards, representing himself, wrote on the chalk board, "Defendant did not confess." He also told the jury during his closing argument that he did not confess to the detectives. In his rebuttal, the prosecutor made the following statements which Edwards characterizes as impermissible comments on his failure to take the stand but which the state characterizes as a justifiable response to Edwards' statements which were unsupported by the evidence before the jury:

> "'The evidence, you will recall, is what the witnesses say from the witness stand here under oath. And there is an important thing about witnesses and what they testify to. They are subject to cross-examination. That is, you can ask the witness, "Well, how do you remember that, Mr. Witness? How do you remember this, Mr. Witness? Isn't such and such true, Mr. Witness?"
>
> The witness answers you back. That's testimony. That's evidence.
>
> What evidence is there that he did not confess? Did any witness come in here and say from the witness stand under oath that there was no confession, there was no confession and the police are lying, there was no confession? That incident never occurred.
>
> No, ladies and gentlemen, nobody testified to that. No witnesses were called that testified about that confession not being made. No witnesses whatsoever.
>
> The most conclusive statement is his own statement. He never said he didn't confess other than writing it on the easel.
>
> He told you he wasn't involved in the crime, he wasn't guilty. Here he told you that like I'm telling you, like I'm talking to you, not under oath.'"

In determining whether these statements were improper, we must obviously examine them in the context made. *See* State v. Ramirez, 116 Ariz. 259, 263, 569 P.2d 201, 205 (1977). The state had introduced substantial evidence that Edwards had confessed, including the content of his confession. Edwards chose not to testify at trial. He had introduced no evidence whatsoever that he had not

confessed. Before the closing arguments he was warned by the judge not to make statements that were unsupported by the evidence before the jury. Nevertheless, he argued that he had not confessed and wrote "Defendant did not confess" on the chalk board.

Upon reviewing these circumstances, we conclude that Edwards' oral and written statements before the jury were improper since they were wholly unsupported by the evidence. State v. Dutton, 106 Ariz. 463, 465–66, 478 P.2d 87, 89–90 (1970). The prosecutor's statements were made in response to Edwards' argument. The error was invited by Edwards. He cannot now raise error that he invited hoping to benefit thereby. State v. Purcell, 117 Ariz. 305, 308, 572 P.2d 439, 442 (1977); State v. Wilcynski, 111 Ariz. 533, 535, 534 P.2d 738, 740, *cert. denied*, 423 U.S. 873, 96 S.Ct. 141, 46 L.Ed. 2d 104 (1975).

**FELONY MURDER CONVICTION**

Edwards argues that the death of the victim from a heart attack that occurred during the robbery may not form the basis of a felony murder conviction because it was unintended and accidental. The cases are to the contrary. In State v. Ferrari, 112 Ariz. 324, 328, 541 P.2d 921, 925 (1975), we noted that a murder that is committed in perpetration of a burglary or any other specifically named felony is punishable as felony murder whether wilful and premediatated or only accidental. *See also* State v. Hitchcock, 87 Ariz. 277, 350 P.2d 681 (1960), *cert. denied*, 365 U.S. 609, 81 S.Ct. 823, 5 L.Ed. 2d 821 (1961); People v. Stamp, 2 Cal. App. 3d 203, 82 Cal. Rptr. 598 (1969), *cert. denied*, 400 U.S. 819, 91 S.Ct. 36, 27 L.Ed.2d 46 (1970); State v. McKeiver, 89 N.J. Super. 52, 213 A.2d 320 (1965).

Edwards also contends that a conviction and sentence for robbery, burglary, and murder violate the double-punishment statute, A.R.S. § 13–1641 (now § 13–116). In State v. Miniefield, 110 Ariz. 599, 603, 522 P.2d 25, 29 (1974), we held that convictions and sentences for both first degree murder and arson (the underlying felony) did

not violate A.R.S. § 13-1641. *Accord*, State v. Clayton, 109 Ariz. 587, 600, 514 P.2d 720, 733 (1973). We find these cases controlling.

## SUFFICIENCY OF THE EVIDENCE

Edwards complains that there was not sufficient evidence on which the jury could find that the robbery caused the victim's death. We do not agree. A pathologist testifying for the state indicated that, in his expert opinion, the death resulted from a heart attack induced by the anxiety resulting from being robbed at gunpoint. He reiterated his opinion on cross and again on redirect. We think there was more than adequate competent evidence before the jury to support the causation element.

## SENTENCING

Since Edwards was sentenced pursuant to the portions of A.R.S. § 13-454 which we held unconstitutional in State v. Watson, ____ Ariz. ____, 586 P.2d 1253 (1978), *cert. denied*, ____ U.S.L.W. ____, this case is remanded for resentencing.

We have reviewed the entire record for fundamental error and have examined all arguments raised by Edwards and find that he was not denied a fair trial. The convictions for robbery, burglary, and first degree murder are affirmed along with the sentences for robbery and burglary. The murder conviction is remanded for resentencing pursuant to State v. Watson, *supra*.

CONCURRING: JACK D. H. DAYS, JUSTICE

JAMES DUKE CAMERON, Chief Justice

FRED C. STRUCKMEYER, JR., Vice Chief Justice

WILLIAM A. HOLOHAN, Justice

GORDON, Justice (Dissenting):

The majority opinion states that *Miranda* does not place a per se ban on police questioning of a suspect after he has invoked his right to counsel. This is clearly the law in Arizona. This Court has held that questioning a suspect after he has asserted his *Miranda* rights is permissible, so long as the suspect's right to cut off the questioning is "scrupulously honored." State v. McGinty, 120 Ariz. 162, 584 P.2d 1153 (1978); State v. Hatton, 116 Ariz. 142, 568 P.2d 1040 (1977).

Similarly, the Ninth Circuit Court of Appeals, in United States v. Rodriguez-Gastelum, 569 F.2d 482 (9th Cir. 1978) *cert. denied*, 436 U.S. 919 (1978), held that although questioning must stop after a right to counsel is asserted, it can later resume if the suspect makes a waiver of the right. Such a waiver of a previously asserted right must meet the definition pronounced in Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). That is to say, it must be an intentional relinquishment or abandonment of a known right or privilege. The *Rodriguez-Gastelum* opinion specifically concluded that a waiver could meet this test even if the questioning was resumed at the instigation of the police.

The facts of this case, however, do not meet the requirements of either the Ninth Circuit or Arizona case law. Edwards asserted that he wanted an attorney before making a deal. At this point all questioning ceased. The next morning, the detention officer told Edwards that detectives were there to see him. *Edwards told the officer that he did not wish to speak to anyone. The officer told him that he had to.*

Because Edwards was told that he had to talk to the detectives, I disagree with the majority's conclusion that his right to cut off the questioning was scrupulously honored. For the same reason his subsequent statements were not an intentional relinquishment or abandonment of his right to counsel, even though the detectives once again read him his *Miranda* rights. This is evidenced by the fact that when asked at the motion to suppress hearing why he

had not once again told these detectives that he wanted an attorney, he responded: "I didn't think you had to keep asking for an attorney over and over and over."

Moreover, I cannot condone the tactics of the investigating detectives. Despite the suspect's prior assertion of his right to counsel, detrectives questioned him the following morning, knowing that an attorney would not be appointed from him until the afternoon. I find the language of State v. Sauve, 112 Ariz. 576, 544 P.2d 1091 (1976) controlling on these facts.

> "After the defendant's refusal to answer questions, the officers ceased interrogation, but their *subsequent conduct and statements were made to persuade the defendant to reconsider his position.* Any response under such circumstances cannot be considered 'volunteered,' and the statements were not admissible." 112 Ariz. 576, 579, 544 P.2d 1091, 1094. (Emphasis added.)

Despite Arizona's rejection of a per se rule regarding the right to remain silent, a suspect's right to cut off questioning must be scrupulously honored, and his statements must be voluntarily made. Because he was told that he had to talk to the detectives and because the questioning took place shortly before an attorney was to be appointed, I would find the defendant's statements to be inadmissible.

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FRANK X. GORDON, JR.
*Justice*

(Caption Omitted)

**Proceedings March 4, 1977**
**A-30683**

[136] LARRY BUNTING,

was thereupon called as a witness in behalf of the Defendant Edwards, and, having been previously duly sworn, was examined and testified as follows:

THE COURT: Sgt. Bunting, you're still under oath and you're still under the Rule. We are hearing the Motion to Suppress with regards to Mr. Edwards' alleged statements.

**DIRECT EXAMINATION**

BY MR. BROGNA:

Q. Sergeant Bunting, do you recall on what date you arrested Robert Edwards?

A. The 19th of January '76.

Q. Do you recall what time?

A. Approximately four in the afternoon.

Q. Where did that take place?

A. I believe the street is Twenty-Seventh just east of Park.

Q. And who was present with you?

A. At the time of the arrest Detective Steve Bunting and a uniformed officer, Officer Allen, I believe.

Q. At the time he was arrested did you go over his Miranda rights with Mr. Edwards?

[137] A. Not at the moment of arrest.

Later at the police station.

Q. Did you take any statements or were any statements made to you at the time of arrest before the police station?

A. Define what you mean by statements.

Q. Did he say anything to you?

A. Just that he wasn't going and—he wasn't going with us.

Q. There was a scuffle and there was a hassle and then you finally securied him and he went with you; is that correct?

A. Yes.

Q. Did he make any statement to you relating to the LaConga Bar burglary-robbery-homicide?

A. Yes.

Q. During that period of time?

A. During that period of time. At the time of arrest, no.

Q. Did he make any statement to you about any offense during that period of time up to the station?

A. No.

Q. And where was he taken when he was taken to the Tucson Police Department?

A. To the Detective Division.

[138] Q. Where was he placed?

A. In the Captain's office.

Q. What captain?

A. I don't recall what captain we had at that time. It was just the only office available at that particular time.

Q. And was there someone in the office with him, did someone go in the office with—

A. Detective Steve Bunting and myself and Mr. Barefield.

Q. Where does the name Barefield come from, this name, as far as you know?

A. Well, I always thought his name was Barefield.

Q. You use it in your report; is that correct?

A. Correct. I wonder where Edwards comes from rather than Barefield. He has been arrested a number of times.

Q. Under the name of Barefield?

A. Barefield.

Q. Did an interrogation take place?

THE COURT: I'm ignoring that testimony.

MR. BROGNA: Excuse me?

THE COURT: I'll ignore the testimony that he has been arrested a number of times.

[139] MR. BROGNA: I don't want it stricken necessarily for this hearing.

THE COURT: All right. Go ahead.

Q. (By Mr. Brogna) Did an interrogation or attempted interrogation take place of Mr. Edwards in that captain's office?

A. Yes.

Q. Were his Miranda rights read to him at any time?

A. Yes.

Q. When?

A. By myself at the beginning of the interview.

Q. And how did you relate those rights to him?

A. By reading to him from the rights card. He acknowledged he understood his rights, waived his rights and stated that he was not involved, he had an alibi, and wanted to make a statement in that regard.

Q. And he gave you a statement?

A. Yes, he did.

Q. And it was recorded?

A. Yes.

Q. And do you have the recording with you?

A. No, I do not.

[140] Q. Do you have the tape recording available to you?

A. Yes.

Q. And that statement concerned an alibi.

A. Yes.

Q. For Mr. Edwards relating to his noninvolvement in the LaConga Bar robbery-burglary.

A. That's right.

Q. At anytime in the presence of the other officer or with you alone, was there some type of an attempted negotiation for a deal?

A. Yes.

Q. To the best of your recollection, Sergeant Bunting, what was that about?

A. As I recall Detective Hallums, who apparently

knew the defendant, talked to him shortly after we took the tape-recorded statement from him. And Hallums told me that he wanted ___

Q. Wait a minute. Were you present when Hallums talked to him?

A. No.

Q. Was Hallums present when the taped alibi statement was taken?

A. No.

Q. How long was it from the time he was arrested until the time he gave this taped quote [141] alibi unquote statement?

A. It was very shortly after we arrived at the police station.

Q. How did Detective Hallums get into the picture?

A. Hallums was in the office. Hallums worked another detail at the time and apparently knew the defendant.

Hallums talked to him for a short time and Hallums told me he wanted to talk to us again. That's when we went back in and he started talking about the deal.

Q. Did Hallums say he wanted to talk to the defendant?

A. Did Hallums say that?

Q. How did he get passed on to Hallums, is what I'm getting to, if you recall?

A. I don't really recall. We were just there and Steve and I came out and ___

Q. Steve who?

A. Steve Bunting. And I don't ___ I'm not really sure how Hallums come to talk—whether Barefield wanted to talk to him or Hallums requested to go and talk to him.

Q. So you don't know if Hallums approached Robert Edwards or Mr. Edwards approached him?

[142] A. I don't recall, no.

Q. But you did get the feeling from talking to Detective Hallums that Mr. Edwards wanted to talk further with you.

A. That's what Hallums said. "He wants to talk to you some more."

Q. Did he say he wants to make a deal with you?

A. No. No, not that I recall.

Q. How long was this statement that Mr. Edwards gave you?

A. I don't recall the number of pages.

Q. The taped statement.

A. The taped statement, I don't recall the number of pages.

Q. It was transcribed; is that correct?

A. Yes.

Q. I'll show you a document marked as Defendant's A for identification—C. Defendant Edwards' C for identification.

A. (Document handed to witness.)

Q. Do you recognize that document?

A. Yes, sir.

Q. What is it?

A. Transcription of the tape recording that was taken from Mr. Edwards. It's eight [143] pages long.

Q. Were you the questioning officer, the interrogating officer?

A. Yes. Yes, I was.

Q. This was his so-called alibi statement.

A. That's correct.

Q. To which you did not give much credence.

A. That's true.

Q. And which you so informed Mr. Edwards.

A. That is true.

THE COURT: The clerk is doing this the right way and

we have done this before. She's just marking ABC and you don't have to call it any particular defendant's exhibit.

Q. (By Mr. Brogna) Did you again go or have an opportunity to speak to Mr. Edwards after you spoke to Detective Hallums?

A. Yes, sir.

Q. Is Hallums a detective now?

A. No, sir.

Q. What's he doing?

A. He's a Field Sergeant now.

Q. When did you talk to Edwards and where the next time?

A. At the same office in the Detective Division, same evening. I don't recall the exact [144] time.

Q. Was it shortly after Hallums indicated that ___

A. Yes.

Q. ___ that Edwards wanted to speak further?

A. Yes.

Q. How long was he with Hallums?

A. I don't know.

Q. What did you do in the meantime?

A. I don't recall.

Q. What happened when you talked to ___ who was present when you talked to Mr. Edwards again?

A. Steve Bunting.

Q. During the next conversation Mr. Edwards requested an attorney before he would talk further; is that correct?

A. No.

Q. Before he would make a deal?

A. Before he would make a deal?

Q. Yes.

A. No. He was willing to make a deal if I would make a deal at that point. And it was ___ it was left that we would

wait—or he was going to wait until he had an attorney before he made the deal.

[145] Q. The deal being the consideration for a statement of implication, of self-implication, is that what you mean?

A. He never did tell me what he was going—going to say.

Q. So you weren't going to offer him anything.

A. I wasn't offering him anything at all except the opportunity to make his side of the story.

Q. Showing you Defendant's B for identification, a copy of your report, more specifically the second page thereof—is that your report, first of all?

A. Yes. Yes, it is.

Q. Is there not an indication that he wants to have an attorney?

A. An indication to have an attorney?

Q. Yes.

A. Yes, there is an indication that he wanted to have an attorney at a certain point.

Q. At what—

A. Would you like me to read—

Q. Without reading, if you can. From your own memory, if you can. If you can't, then you can read it.

[146] A. I don't—the question is what, sir?

Q. When did he want an attorney?

A. He never asked for an attorney. He stated he was going to wait until he had an attorney to make a deal. That was the only talk of an attorney with the exception he wanted—as a matter of fact, he insisted on talking with the prosecuting attorney and try making a deal.

Q. Before that?

A. During this—during this deal negotiation that he was trying to work out.

Q. He did in fact talk to a deputy county attorney.

A. Yes, he did.

Q. Randy Stevens?

A. Yes, he did.

Q. Chief Deputy County Attorney.

A. Yes.

Q. On the telephone?

A. Yes.

Q. In whose presence was Mr. Edwards at that point?

A. Detective Bunting and myself, Steve Bunting.

Q. Was that the time after he had spoken to Detective Hallums and you had again talked to him in the captain's office?

[147] A. Yes. This was after he spoke with Hallums.

Q. The negotiations for this deal at some point broke down.

A. That's true.

Q. And at some point Mr. Edwards indicated that he was not going to make any type of deal until he talked to his attorney first.

A. His attorney, or got an attorney, yes.

Q. All right. Now, what—what deal are you talking about or was he talking about?

A. I'm not—I'm not really sure because you've got to, if I can—

Q. Go ahead.

A. —picture the setting.

Q. Go ahead.

A. This was a situation where I had explained to Barefield the allegations that the other defendants had made concerning him, namely Soto and Kevin Reed.

And this was before the taking of the taped statement. The taped statement was taken and his alleged alibi was—was what was on the tape.

Then Hallums talked to him and then he wanted to talk more about what these people had said, so we went back over it again, about the allegations that Reed had made

and Boy (phonetic) Soto had made and then he explained that he had been around, he knows what's going on, and he wants to make a deal if it will help him.

[148] I explained to him that I'm not making a deal, I'm not offering a deal. If he has a side of the story to tell, that's what I'm willing to listen to.

Then he requests to talk to the prosecuting attorney. The prosecuting attorney at the time was Becker, who we couldn't get a hold of. He spoke to Stevens briefly.

At one point in all of this he was going to make a statement and then he changed his mind and it was just kind of a back and forth situation whether he was going to make a statement or not.

He was trying to get me to commit myself to a deal to him and I was not going to make him any deals.

That's where it eventually broke down and he said, "I'm just going to wait until I get an attorney to make a deal for me."

[149] Q. As far as you're concerned, Sergeant, when you say a deal, you meant that he confessed his complicity or be truthful about his complicity, if anything, in the LaConga incident in return for, say, a reduction of charges or something like that?

A. This is—this was my understanding of what the deal would have been.

Q. A deal means as far as getting what you want from the suspect, a deal means a statement in the broad sense, a confession more specifically.

A. I'm not sure I understand your statement.

Is that a statement or a question to me?

Q. It was a question. I'll repeat it, or rephrase it.

At that time deal to you meant a benefit from any deal or the deal to you would have been partly getting a statement from him.

A. Let me make it clear, I was not offering a deal. My purpose of interviewing him was to obtain a statement or an admission to be used in court.

Q. Against him?

[150] A. Against him.

Q. All right.

A. It was him, Mr. Barefield, that was wanting the deal that I was not going to commit myself to or the County Attorney's Office did not commit themselves to.

Q. Did the—when he did indicate that he was going to wait until he got an attorney before talking any more about a deal, did questioning continue after that point?

A. No.

Q. Had he been arraigned before a Magistrate up to that point?

A. No, he had not.

Q. All right. And did he, after mentioning that he was going to wait until he got an attorney, did he—before he talked further about a deal, is that the substance of what he said, is that a fair statement?

A. I think I should point out to you that it wasn't just this one time that he was talking about a deal.

It was, you know, it was kind of a back and forth situation where he was going to make a statement without a deal and then he decided he was going to wait and get an attorney [151] and get a deal and—but there was no questioning on our part as to his particular part in this.

I just pointed out to him, "The only thing I'm going to give you is the opportunity to make your side of the story known."

And he did make at least an initial side of the story known, or an alibi known.

Q. So you did have a statement which you obviously didn't believe. There was some discussion at least on his part about a deal talking with you and the county attorney. And then he was sent back to the Pima County Jail.

A. Not sent back. Sent to.

Q. Sent to the Pima County Jail.

A. Right.

Q. And his parting words were something to the effect that, "Wait until I get an attorney," or were there more words from his mouth at that time?

A. Oh, there were a lot of words from his mouth. I don't recall if those are the exact words.

When he left there my impression was that he was going to wait until he got an attorney, try to get the best deal he could for him.

[152] Q. But you had hopes that he might talk before that.

A. I always have hopes, Mr. Brogna.

Q. All right. But you did hear that he did mention that he was going to wait until he got an attorney.

A. Before making the deal?

Q. Before making the deal.

A. Yes. At that particular time that was —

Q. All right.

A. —his parting statement.

Q. Did you send Detective Marmion to the Pima County Jail the next morning to talk to Mr. Edwards?

A. No, I did not.

Q. Did he go on his own to your knowledge?

A. Yes.

Q. And —

A. And I was —

Q. Go ahead. I'm sorry.

A. I was pleasantly surprised when he come back and told me the news.

Q. Had you spoken to Detective Marmion?

A. I'm sure I had.

Q. About Mr. Edwards?

[153] A. About Mr. Edwards?

Q. Yes.

A. I don't—I can't say for sure. I would assume so.

Q. You would assume so. Was Detective Marmion in the police station when Mr. Edwards was being interrogated and the statement being taken, the taped statement?

A. I don't recall.

Q. But this was Marmion's case, was it not?

A. Yes. He was the lead detective on it, yes.

Q. And he was informed that he had given—that Mr. Edwards had given an alibi statement, was he not?

A. I don't have specific recall of it. Normally operating circumstances, he would have been informed, yes.

Q. Now, Mr. Williams was to be arraigned at—excuse me—Mr. Edwards was to be arraigned I guess, at one thirty or two o'clock. Was that in effect the initial arraignment?

A. Yes, I believe they were.

Q. Now, and before a public defender or an attorney was appointed.

To your knowledge is that when [154] attorneys are customarily appointed?

THE COURT: To the Court's knowledge it is, if you want that.

MR. BROGNA: I would ask the Court to take notice of the proceedings.

Q. (By Mr. Brogna) Detective Marmion, do you know what time he went over to speak to Mr. Edwards the following morning?

A. No, I don't.

Q. Do you know whether it was in the morning?

A. I believe it was, but I can't be certain.

Q. Do you know whether it was before arraignment and he had an attorney appointed?

A. Just from my knowledge of the way arraignments run and how the procedure is, I would say that would have been prior to an arraignment.

Q. Do you remember any specific conversation be-

tween Detective Marmion and yourself regarding defendant Edwards' case prior to Detective Marmion going over to the Pima County Jail the following day?

A. No, sir, I don't.

Q. Did Mr. Edwards request that you come yourself to the Pima County Jail or that Detective [155] Marmion be sent out there?

A. I have no knowledge of such a request.

Q. Your report does not indicate any such request for additional interrogation or talk of a deal; is that correct?

A. That is correct.

Q. Did you ever—you being the Sergeant of the Homicide Detail—did you ever direct any of your detectives not to bother Mr. Edwards any further?

A. No, sir, I didn't.

Q. Again referring specifically to your report, Defendant's B for identification, the second to the last paragraph where the attorney is mentioned, will you read that entire sentence into the record.

A. "At one point Barefield said he was going to make a statement and then changed his mind and stated that without a deal he was not going to make a statement. He would wait for his attorney to make a deal for him."

MR. BROGNA: I have no further questions.

THE COURT: Mr. Lingeman.

**CROSS-EXAMINATION**

[156] BY MR. LINGEMAN:

Q. Mr. Bunting, at anytime during the course of that conversation, and prior to this taped conversation, at anytime during this day that you made the arrest and that you have been testifying to, did Mr. Williams—excuse me—Mr. Edwards ever state to you at anytime that he didn't wish to talk to you without an attorney being present?

A. No, sir.

Q. Did he ever at anytime during this day that the arrest was made, during the day that you have been testifying about, did he indicate that he wished to have an attorney appointed for him?

A. No, sir.

Q. Is the only thing he ever said with reference to an attorney this statement you just read from your report and that he would wait and let an attorney make a deal for him?

Is that the only thing he ever said reference an attorney?

A. No. He said he wanted to talk to the prosecuting attorney.

Q. Reference any attorney other than the [157] prosecuting attorney, is this the only statement he had ever made about attorneys?

A. Correct.

Q. During your conversations with him was he cooperative to the extent that he was very talkative during the entire course of your inquiry about the LaConga Bar robbery?

A. Yes, he was.

Q. Did he ever at anytime indicate to you that he didn't wish to talk to you or didn't wish to make a statement prior to the statement you took, the taped statement, the alibi statement, I'll refer to it as.

A. No, sir.

Q. After the alibi statement was he still talkative with you?

A. Yes.

Q. And apparently at some point in time he indicated he wanted to make a deal.

Is that the first time he ever indicated to you that he wished to talk to you some more about the LaConga Bar robbery additionally to what he had said in the alibi statement?

A. Yes.

Q. For some period of time after this there was talk about a deal and you weren't giving him [158] any deal and he wanted to talk to the county attorney and he did talk to the county attorney; is that correct?

A. Correct.

Q. And during all of this time he continued to talk to you and never requested an attorney or never requested that he shouldn't be talked to or never in any way indicated that he didn't want to talk to you; is that correct?

A. That is correct.

Q. Did Mr. Edwards seem to understand your questions and were his answers appropriate to his questions?

A. Oh, yes.

Q. Did you have any problem communicating with him in a rational manner?

A. No, sir.

Q. And you had advised him of his constitutional rights off a rights card; is that correct?

A. Twice he was advised.

Q. Could you go ahead and advise us the way you advised him.

A. Which time?

Q. Either time, if it was the same. If it was different, let me know.

[159] A. Prior to the interview after arrest, he was read from the rights card and then his rights were read to him again and placed on tape and he was advised to the following.

"You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have an attorney to be with your prior to questioning and during questioning if you so desire. If you can't afford an attorney, you have the right to have an attorney appointed for you prior to questioning."

He was asked if he understood these rights. He said he did.

"Now, having been advised of these rights and understanding these rights, will you answer my questions?" Which he did.

Q. When you finally terminated the discussion of a deal and the negotiations, or whatever was going on that day, did Mr. Edwards tell you, "I'm not going to talk to you any more and I don't want to talk to the police any more until I see a lawyer"?

A. No, sir.

Q. Did he ever indicate to you that he would not talk to you any longer perhaps by [160] saying, "I don't want to talk to you any more about this case," or, "I don't want to talk to any police officers"?

Either an express statement or an implied statement.

A. No, sir.

MR. LINGEMAN: That's all the questions I have.

**REDIRECT EXAMINATION**

BY MR. BROGNA:

Q. The sentence that you read from your report, he uses the word—he uses the term State in the same sense that he uses the word deal and attorney and you did not conceive of that as meaning—you conceived of these as between two different things, a statement and a deal.

MR. LINGEMAN: I think that's an improper question. It's Detective Bunting's statement that's contained in there.

THE COURT: Overruled. That's what I understand he is asking.

THE WITNESS: The statement that's in the report is the way I dictated the report to refresh my memory concerning the circumstances [161] how it occurred at that time.

I'm not saying that this was his exact words. This was the meaning that I attached to it.

Q. (By Mr. Brogna) That without a deal he was not

going to make a statement and he would wait for his attorney to make a deal.

Those are your words, Sergeant, in the report.

A. Perhaps it—

MR. LINGEMAN: Your Honor, I am going to object until there is a question before the witness.

THE COURT: Sustained.

Q. (By Mr. Brogna) Are those your words?

A. These are my words, yes.

MR. BROGNA: No further questions.

MR. LINGEMAN: I have nothing further.

THE COURT: You may step down.

MR. LINGEMAN: May this witness be excused at least for today?

THE COURT: Yes. You are excused.

MR. BROGNA: Subject to recall.

THE COURT: Yes. Everyone has to remain available in this case.

MR. BROGNA: I call Mr. Edwards to the [162] stand.

ROBERT EDWARDS,

the defendant herein, is thereupon called as a witness in his own behalf, and being first duly sworn, was examined and testified as follows:

THE COURT: Good afternoon, Mr. Edwards.

THE WITNESS: Good afternoon, sir.

THE COURT: Proceed.

**DIRECT EXAMINATION**

BY MR. BROGNA:

Q. Would you state your name for the record.

A. Robert Edwards.

Q. Were you present when Detective Sergeant Bunting just testified?

A. Yes, I was.

Q. Did you in fact give a taped statement to Detective Sergeant Bunting at the Tucson Police Department on January 19, 1976?

A. Yes, I did.

Q. The day you were arrested?

[163] A. Yes, sir.

Q. Do you recall what, if anything, you said to Sergeant Bunting about making a further statement?

A. No, I didn't.

Q. I said what if anything do you recall, do you remember saying anything about another statement?

A. No.

Q. Did you give another statement—

A. No.

Q. —to the police.

Did—did an officer at any other time attempt after that, after Sergeant Bunting talked to you, did any other officer attempt to get another statement from you?

A. Sergeant—Detective Marmion.

Q. And when did that take place?

A. That took place the next morning about eight o'clock or nine somewhere.

Q. Did you ask—

THE COURT: Where did this take place?

THE WITNESS: This took place at the County Jail.

Q. (By Mr. Brogna) And did he come over at your request?

[164] A. No, I didn't request to see nobody.

Q. Did you ask to see Detective Marmion?

A. No, I didn't ask to see him.

Q. Had you been arraigned in court yet?

A. No, I wasn't.

MR. BROGNA: No further questions of Mr. Edwards at this time.

THE COURT: Mr. Lingeman.

**CROSS/EXAMINATION**

BY MR. LINGEMAN:

Q. Did you give a truthful statement to Detective Marmion that day?

A. No.

Q. What did you do?

A. Detective Marmion came down and asked me to make a statement and I already told him I had made a statement I wasn't involved in nothing.

And he told me that—that he was going to catch Willie Williams and he was going to make a statement and there was a couple of more had made statements against me.

Q. I guess there was another detective with Detective Marmion.

A. I think Detective Hallums.

Q. You told those gentlemen you didn't [165] want to talk anymore and you didn't give them another statement.

A. They got another statement.

Q. From you?

A. I don't know how they got it, but—

Q. Maybe I confused you.

A. Repeat the question again.

Q. Sure, Mr. Edwards.

The next day when Detective Marmion and the other detective came to talk to you, this was the day after you were arrested, I guess you're saying you didn't give them another statement, they asked you for one and you said you didn't have anything to say, you weren't involved; is that right?

A. They said more than that.

Q. Did you give them a statement about your involvement?

A. I don't understand what you're talking about.

Q. Did you tell them at that time, the day after your arrest, did you tell Detective Marmion and the other detective about your involvement in the LaConga Bar—

A. No, I didn't.

Q. There was no statement. They tried to [166] get one and you told them you didn't have anything more to say about it; is that right?

A. I told them I didn't have anything more to say about it and they left and they said they was going to pay me back.

MR. LINGEMAN: Okay. That's all I have.

THE COURT: You may step down.

THE WITNESS: Yes.

(Witness leaves stand.)

MR. BROGNA: Call Detective Marmion.

THE COURT: Before we call the witness, Mr. Noe, you are here and have you got anything to take up with the Court?

MR. NOE: Nothing at this stage, Your Honor.

THE COURT: Thank you.

MR. BROGNA: Detective Marmion, please.

[167] VICTOR Z. MARMION,

was thereupon called as a witness in behalf of the defendant, and being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. BROGNA:

Q. Would you state your name, please.

A. Victor Z. Marmion.

Q. Did you obtain a statement from Robert Edwards on January 20th of 1976?

A. A verbal statement, yes, sir.

Q. Where was this statement obtained?

A. Pima County Jail.

Q. Who was with you?

A. Detective Milne.

Q. What time was it?

A. When I first—when we first contacted Mr. Barefield it was approximately 9:15 a.m.

Q. Did Sergeant Bunting dispatch you to the jail?

A. No, sir. I went there of my own accord.

Q. Did you know he had given a statement the day before that to Sergeant Bunting that was on tape?

[168] A. I knew Sergeant Bunting had spoken with Mr. Barefield. I knew the very basic facts surrounding his statement as far as an alibi and that he was denying being involved in this incident.

Q. Did Sergeant Bunting tell you that Mr. Barefield, as you call him, wanted to see or talk to an attorney before he made any quote deal unquote?

A. No, I don't recall Bunting telling me such a thing.

Q. Were you the—were you aware before going out to the jail that Mr. Edwards at one point the day before mentioned an attorney?

A. No. When I went out to the County Jail I wasn't really that concerned with what he had said the day before. I went out there of my own accord to see what he was going to tell me that particular day.

Q. You weren't concerned that he had said anything about an attorney or a deal?

MR. LINGEMAN: Your Honor, I'm going to object. Asked and answered.

The detective has indicated what he knew and didn't know already, specifically about those two facts.

[169] THE COURT: Overruled. You may answer. Do you remember the question?

THE WITNESS: No, sir.

THE COURT: The question was you weren't concerned about an attorney or a deal.

THE WITNESS: No, sir, not at that time. I just went out on my own.

Q. (By Mr. Brogna) Went out before arraignments?

A. Well, if it was about nine fifteen in the morning I would have to say yes.

Q. It isn't your practice to go out after they have been appointed attorneys?

MR. LINGEMAN: I object. That's irrelevant what their practice is.

The question is in this case about did he go out before or after.

THE COURT: Sustained as to the form of that question. You may inquire further.

Q. (By Mr. Brogna) Were you aware that Mr. Edwards was not arraigned or brought before a Magistrate for an initial appearance at the time you went out?

A. I was aware of it sometime that morning while I was talking, but I don't remember what stage he told me that he didn't have an [170] attorney, but he did mention it to me.

Q. You knew what—what time people were brought before a Magistrate, did you not?

A. I do. Usually about one thirty, two o'clock.

Q. So you were—you were sure he didn't have an attorney yet appointed.

A. As I have stated, I didn't give it any thought until I got up there and had some conversation with Mr. Barefield and Mr. Barefield indicated to me he didn't have an attorney.

I had one thing on my mind, to go out there and question him about his murder and see what he was going to say.

Q. He didn't want to—he didn't want to talk to you or have you put anything on tape, did he?

A. He wanted to talk to me.

Q. He didn't want you to put anything on tape, did he?

A. He didn't want to give me a tape-recorded statement. That is correct.

Q. Did he tell you why he didn't want you to tape a statement?

A. He said he just didn't want it on tape.

Q. He did not relate that he said he [171] didn't want to put it on tape because he knew it could be used against him, it could be incriminating to him?

A. If I can backtrack, I think I can explain this.

Q. I want you to ask (sic) that question.

MR. LINGEMAN: I think he has a right to explain his answer if he needs to.

THE COURT: You have to answer the question, but you may explain your answer if necessary.

THE WITNESS: Repeat the question.

Q. (By Mr. Brogna) I don't remember the question.

THE COURT: Do you want the reporter to read it?

MR. BROGNA: Please.

(Whereupon, the reporter read the last question.)

Q. THE WITNESS: He said he didn't want it to be on tape. I made the reply, "What's the big deal? There are two of us here. We can both testify to it if you talk to us."

He said, "I don't want it on tape."

This is approximately—I had played eight or no more than nine minutes of Manny Soto's statement.

[172] Q. (By Mr. Brogna) Let me show you Defendant's A for identification purposes, which purports to be a copy of your report.

Would you personally identify if it is?

A. Yes, that appears to be a copy of my supplement.

Q. There is a portion of your report relating to your

interrogation of Mr. Edwards at the Pima County Jail on January 20th, 1976.

Could you find that?

A. Yes. It starts on Page approximately 6 and continues on to Page 7.

Q. There is a portion of that—more particularly that in which you describe the reasons for Mr. Edwards not having you record any statements, is there not?

A. That's correct. He indicated they would be used against him in a court at a later time. He would tell us anything we wanted to know.

Q. But not—but not have it taped; is that correct?

A. That's what he said.

Q. Because he was afraid that that could be used against him in a court of law.

[173] A. Well, he told me that it would be used against him in a court later. Whether or not he was afraid I can't answer that. I can't answer what was going through the man's mind.

As I have stated, he said he did not want to give us one because it would be used against him later on.

I said, "Big deal. There are two of us. We can testify about it."

He said, "No, I don't want to give one."

Q. Are you saying, Detective Marmion, that he—he didn't want to give you a tape—he told you he didn't want to give you a tape recording because he knew it could be used in a court of law, but he decided that he was going to give you an oral statement because he knew very well that that could be used in a court of law?

A. What I'm saying, the man decided that he didn't want to give me a taped statement and he said he was going to give us an oral report. What reasons he had I don't know.

Q. You weren't fast-talking him with a tape recorder?

A. I didn't have a tape recorder.

Q. You had a tape recorder in there with [174] you.

A. I had it in there with me, correct, but I didn't have it on.

Q. Why was—who brought up the tape recorder first of all?

A. Barefield.

Q. And in what context did he bring up the tape recorder?

A. He said he would talk to us, but first he wanted to hear part of Manny Soto's statement.

Q. Did you play part of Boy Soto's statement?

A. I did.

Q. Did any—did that tape recorder come up again reference a statement by Mr. Edwards?

A. I don't quite understand the question.

A. Did Mr. Edwards in reference to something he was going to say, mention a tape recorder, that he didn't want it or he did want it or he didn't care if it was there?

A. As I stated, I asked him if I could record his statement and he said no. That's the only time I recall him bringing it up again.

Q. Did he give you a reason why he didn't want it recorded?

A. Yes. He said he didn't want it used [175] against him in court later on.

THE COURT: I think we are going to have to stop, Mr. Brogna, at this point. Is that satisfactory with you?

MR. BROGNA: Yes, sir.

THE COURT: We'll stand at recess until one thirty Monday afternoon with this witness on the stand and we'll complete the motion before we go back into the other one.

MR. LINGEMAN: Judge, it occurs to me that if we have to leave to go out of town on the matter that we have—

THE COURT: Somebody let me know and we'll get some other work.

(Whereupon, the evening recess was had.)

(CAPTION OMITTED)

**PROCEEDINGS MARCH 7, 1977**
**A-30683**

[9] VICTOR Z. MARMION,

thereupon resumed the stand as a witness in behalf of the Defendant Edwards, and having been previously duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION (continued)**

BY MR. BROGNA:

Q. When you saw Mr. Edwards at the Pima County Jail on January 20th, 1976, did you take some tapes with you?

A. Yes, sir, I did.

Q. Any particular person's tape?

A. I had Manny Soto's tape with me.

Q. Prior to going to the Pima County Jail and seeing Mr. Edwards, did you have knowledge that he requested to hear Soto's statement?

A. No, sir.

Q. Did you bring the tape at your own initiative?

A. Yes. I was carrying it with me.

Q. Did you—when you walked in or when you first started talking to Mr. Edwards, did you suggest that he should listen to Soto's conversation?

A. No, sir. It was played for Mr. Barefield [10] at his request.

Q. What did he do, ask you, "What's that you've got with you?"

A. No. He had knowledge that we had a statement from the other suspect Soto, and—

Q. You had a confession from Soto?

A. That's correct.

Q. And how did he get knowledge of that?

A. Oh, I don't—I can assume, but I'm not positive because I wasn't present at the time.

Q. You didn't tell him?

A. No.

Q. When you walked in was Detective Milne with you?

A. Yes, sir.

Q. When you walked into the jail where did this conversation take place?

A. In one of the attorneys' booths.

Q. You walked over there with the tape of Mr. Soto and a blank tape, I take it?

A. I remember having the whole file with me. I had the tape recorder and some tapes. I don't recall exactly how many.

Q. Do you remember how the conversation in that room was initiated or who initiated the conversation?

[11] A. Yes, sir.

Q. Go ahead.

A. From the beginning?

Q. Yes.

A. I got there. I identified myself to Mr. Barefield as a homicide detective.

He said something to the effect, I don't remember his exact words, that he recognized me from seeing me the night before at the Detective Division.

I told him I was the detective that had the case and I wanted to talk to him.

I then advised him of his constitutional rights. He replied that he would talk to me and tell us anything he wanted to know, but, first, he wanted to hear Manny Soto's statement.

I played—proceeded to play Soto's statement.

I played approximately nine, no more than 12 minutes, of the statement to him.

Q. All right.

A. Then I stopped. I stopped the tape and asked him if he would give us a statement.

Q. What did he say?

A. He said because he didn't want it used [12] against him in court.

MR. BROGNA: I have no further questions.

THE WITNESS: He didn't—

THE COURT: Just a minute. Just a minute. Have you finished answering Mr. Brogna's question?

THE WITNESS: No. I was going to clarify that it was the taped statement that he didn't want to be used in court.

THE COURT: Do you want to examine further?

MR. BROGNA: Yes, please, Your Honor.

Q. (By Mr. Brogna) He said he didn't want to give you a taped statement because it could be used in court?

A. Yes, sir. And then I proceeded to say something else.

Q. What did you say?

A. I said if you are going to give us a verbal statement, oral statement, big deal. Milne and I can testify. We would rather have it in your words.

He said, "I just don't want to give a taped statement."

Q. Because it could be used in court.

[13] A. Yes, sir.

Q. He feared this.

A. The tape statement. He didn't appear to fear the verbal or oral statement.

Q. Did you take notes with which to draft this oral statement in your notes?

A. No, sir. When Milne and I were on the car outside

right after leaving I put this on the tape recorder. Later I listened to my tape recording and wrote it out on my work pad.

Q. Is that tape still available?

A. No, sir.

Q. Do you recall what time this conversation was finished or concluded?

A. To the best of my recollection it was about nine fifteen when we contacted him in the morning and we left the County Jail about approximately ten forty, so I would say approximately ten thirty.

MR. BROGNA: I have no further questions so far.

THE COURT: Mr. Lingeman.

**CROSS-EXAMINATION**

BY MR. LINGEMAN:

Q. When you learned that Mr. Edwards was [14] reluctant to give you a taped statement, did you take pains to tell him that the—even though it wasn't taped, that it—

THE COURT: Sustained as leading. Mr. Brogna indicated he was going to object and I agree.

Q. (By Mr. Lingeman) What did you do to make it clear to Mr. Edwards, if anything, reference what use could be made of this statement?

A. I told him that the verbal statement would be used against him and I did this for two reasons.

At the time there was two things going through my mind.

Q. What were those two things?

A. The first reason was that I wanted to be sure he understood what was going on, that he voluntarily waived his right, that he understood it would be used against him.

And the second reason was I knew if he didn't understand, that it would be inadmissible in court.

Q. Detective Milne was there when this exchange and conversation and clarification took place?

A. Yes, he was.

[15] MR. LINGEMAN: That's all I have.

MR. BROGNA: I have nothing further.

THE COURT: You may step down.

(Witness leaves stand.)

MR. BROGNA: I forgot who was putting on the proof.

THE COURT: Mr. Lingeman.

MR. LINGEMAN: Detective Milne. If Sgt. Hallums is out there, I will take him because I think he will be shorter.

THE COURT: I said Mr. Lingeman was putting on the proof. We had Mr. Edwards and then my notes show that we had Detective Marmion and I don't see that I show you had finished.

I guess to correct the record you are still proceeding on the motion.

MR. BROGNA: I would call Detective Hallums if he is available now.

[16] PAUL HALLUMS,

was thereupon called as a witness in behalf of the defendant Edwards, and being first duly sworn, was examined and testified as follows:

THE COURT: The witnesses in this case are under the Rule. You can't be in the courtroom at anytime except when you're testifying. You are not to discuss your testimony with anyone except the attorneys until I have finished hearing this motion. Thank you.

THE WITNESS: Thank you.

**DIRECT EXAMINATION**

BY MR. BROGNA:

Q. Would you state your name, please.

A. Paul Hallums.

Q. And your current occupation?

A. Sergeant, Tucson Police Department.

Q. Calling your attention to last—well, January 19th of 1976, what division were you working with then?

A. As a Detective in the Armed Robbery Detail.

Q. On January 19, 1976, did you have occasion to interrogate or attempt to interrogate [17] Mr. Robert Edwards?

A. Yes.

Q. Where did this take place?

A. At the Tucson Police Department.

Q. And how did this take place?

A. He was already there. He had been talking to some other detectives.

I had a case that I wanted to talk to him about and went in and talked to him about that case.

Q. Did he see you, did Mr. Edwards see you and come over and talk to you, Sergeant?

A. No. He was in an office at the Detective Division.

Q. Just how did he get into your office or how did you get to talk to him, if you remember specifically?

A. He had been brought there by some other detectives and was in custody.

Q. And you saw him and wanted to speak to him.

A. That's right.

Q. How did that conversation start?

A. I had a—

Q. Without going into what you were investigating, how did the conversation start?

[18] A. I introduced myself and advised him of my function and told him I wanted to talk to him.

Q. All right. Did you ask him if he wanted to talk to you?

A. No. I told him what I wanted to talk to him about.

Q. And you started asking him questions about armed robberies?

A. That's right.

Q. Or an armed robbery.

Did there ever come a time when he told you he didn't want to talk any more or didn't want to talk?

A. No.

Q. How did the conversation terminate?

A. I asked him if he would like to speak to Sgt. Bunting again. He stated he would and he did and I left.

Q. Without you asking him, did he tell you he wanted—did he come out and on his own say he wanted to speak to Bunting again?

A. No.

MR. BROGNA: I have no further questions.

**CROSS-EXAMINATION**

BY MR. LINGEMAN:

[19] Q. This other robbery case was not the LaConga robbery.

A. No.

Q. It was something unrelated to this murder case.

A. That's right.

Q. Did he indicate he wanted an attorney or didn't want to talk to you or didn't wish to talk to anybody?

A. No.

MR. LINGEMAN: That's all I have.

**REDIRECT EXAMINATION**

BY MR. BROGNA:

Q. How long did this conversation take place?

A. Between five and ten minutes.

Q. Did it take place in the same room that Sgt. Bunting was talking with him in?

A. Yes.

Q. Did Sgt. Bunting leave the room while you commenced to speak?

A. Yes.

Q. When you left the room, did Sgt. Bunting go back?

A. Yes.

[20] Q. And continue to talk to Mr. Edwards?

A. He went back in the room.

Q. Were there any other detectives down there at the time talking to Mr. Edwards?

A. Sgt. Steve—excuse me—Detective Steve Bunting.

Q. Was he in with him alone or someone else?

A. When I left he went back in with Sgt. Bunting.

MR. BROGNA: I have no further questions.

THE COURT: You may be excused.

THE WITNESS: Thank you.

(Witness excused.)

MR. BROGNA: Detective Milne, please.

MR. LINGEMAN: May this witness be excused?

THE COURT: I did excuse him.

[21] CHARLES MILNE,

was thereupon called as a witness in behalf of the Defendant Edwards, and having been previously duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. BROGNA:

Q. Would you state your name, please.

A. Charles Milne.

Q. Your occupation?

A. Detective, Tucson Police Department.

Q. Were you so employed on January 19, 1976?

A. Yes.

Q. On that date what particular detail were you working?

A. Homicide.

Q. Did you have occasion to investigate the LaConga robbery and homicide?

A. I had occasion to assist in that investigation, yes.

Q. Okay. On January 19, 1976, did you talk to any of the alleged defendants in the case—well, specifically, did you talk to Mr. Robert Edwards?

A. It was either on the 19th or the 20th, [22] I'm not sure which date it was.

Q. Did you ever talk to him at the police station?

A. No, sir, I did not.

Q. Did you ever see anyone talk to him at the police station?

A. He was with other people, but as far as an interview being conducted of Mr. Barefield, no, I did not.

Q. Who was he with?

A. He was in the same general area of Sgt. Bunting and Detective Marmion and myself and I believe Detective Steve Bunting.

Q. When did you talk to Mr. Edwards?

A. I believe it was the following day.

Q. Where did you talk to him?

A. At the Pima County Jail.

Q. That would be January 20th, 1976?

A. Yes.

Q. What time did you speak to him?

A. I think it was approximately nine fifteen in the morning

Q. By whom were you dispatched to the Pima County Jail to speak to Mr. Edwards?

A. I accompanied Detective Marmion.

Q. How is it that you decided to go to [23] the Pima County Jail and talk to Robert Edwards?

A. It was Detective Marmion who apparently wanted to talk to him about the case under investigation.

I was asked to accompany him and—

Q. By whom?

A. By himself.

Q. You knew that Robert Edwards was interrogated the day you had seen him down at the station?

A. I had no personal knowledge of that other than what I was told that somebody had talked to him, yes.

Q. Sgt. Bunting told you, did he not, that he tried to get a statement from Edwards?

A. I don't believe he told me anything directly. It was in conversation that it was overheard.

Q. With other detectives of the Homicide Detail?

A. Yes.

Q. That Mr. Edwards had given some type of a baloney alibi statement; is that correct?

A. I don't recall him specifically making that statement.

Q. Well, what—

[24] A. I don't recall what the context of the statement was.

Q. What do you remember specifically hearing about Mr. Edwards' conversation with the police on the 19th?

A. It would be a basic thing on my part. I assumed he didn't want to give a statement at that time.

Q. That's right. He was holding out.

A. Well, I don't know if those were the exact words.

MR. LINGEMAN: I object to him asking the witness to speculate since the witness already testified that he wasn't present and didn't hear what happened that first day.

THE COURT: The present record may stand. Proceed.

Q. (By Mr. Brogna) I don't know if I asked you what time did you go the the Pima County Jail.

A. Approximately nine fifteen on the following morning of January 20th.

Q. Where did you specifically go in the jail, did you talk to Mr. Edwards?

A. It was in one of the old attorney's booths.

[25] Q. Is there any reason you went out to the jail in the morning rather than the afternoon of the 20th?

A. No, other than that was the time Detective Marmion wanted to go out and talk to him.

Q. No particular hurry to see him, say, before initial appearances?

MR. LINGEMAN: Objection.

THE COURT: Overruled.

THE WITNESS: That—not that I know of. Not to my knowledge, no.

Q. (By Mr. Brogna) What did you or Detective Marmion, that you saw, take into the attorney's booth or the room with you at the jail?

A. To my recollection I don't think anything was taken into the booth.

Q. Was there a tape recorder? Let me ask you that, did somebody have a tape recorder?

A. I can't swear to it. I would have to look at the reports. If it's in the reports, that's how it would refresh my memory. I just—

Q. All right.

A. —don't remember.

Q. Let me show you Defendant's A for identification and see if you recognize that.

[26] A. This is a supplement that I made dated the 22nd of January.

Q. Is that supplement relating to the LaConga investigation and the part you took?

A. Yes.

Q. Is that the only report you made?

A. This is the only report, yes, sir.

Q. Is there any mention at all about your accompany-

ing Detective Marmion to the jail for a statement from Mr. Edwards?

A. No, sir. My involvement with Detective Marmion concerning Mr. Barefield was documented by a supplement that he made.

Q. Let me ask you then if you can remember, without a report, do you recall Mr.—as you call him—Barefield that day having any reluctance, showing any reluctance, to give a statement to Detective Marmion and yourself?

A. On January 20th?

Q. At the jail, yes.

A. No, sir.

Q. Do you recall the playing of a taped statement of Boyd Soto or Boy Soto for Mr. Edwards to kind of prime him?

A. There was a tape played, one from Mr. Williams that I know, and it's possible it was [27] played for Mr. Barefield, but, again, I would have to refresh my memory by reading the report or glancing at the report.

Q. Do you remember obtaining a statement from Mr. Edwards that day?

A. Yes.

Q. Do you remember whether it was a taped statement or just an oral statement?

A. It was an oral statement.

Q. That wasn't taped?

A. Yes.

Q. Do you remember any discussion of taping the statement or not taping it?

A. Mr. Barefield was asked if he would supply Detective Marmion with a taped statement.

He had indicated that he would talk to us, but he did not want the information documented on tape.

He was advised that being that we were both there we could both testify to in court anything he did say verbally, whether it was on tape or not.

And he again reiterated that he would talk to us, but he didn't want his voice down on tape.

Q. Did he tell you why he didn't want it [28] down on tape?

A. He indicated that he did not want the tape used against him in court.

As I said, we advised him that any statements he made to us, whether they were on tape or not, could be used against him in court.

Q. Is there any reason why two rather than one detective went to the Pima County Jail to talk to Mr. Edwards?

A. Well, I wasn't going to the jail for the purpose of talking to Mr. Edwards. I was going to the jail for the purpose of just being a witness to any statements that he made.

Q. The expressed purpose then at least as far as you knew of going to the jail that day was to obtain a statement.

A. Was to interview Mr. Barefield with the obvious—obtaining the statement would be obvious.

MR. BROGNA: I have no further questions.

THE COURT: Mr. Lingeman.

**CROSS-EXAMINATION**

BY MR. LINGEMAN:

Q. You indicated just now that Mr. Edwards [29] did not want the tape used against him in court. And I think you indicated that there was some explanation after he said that about what could be and what could not be used in court; is that right?

A. That's right.

Q. Did you and Detective Marmion, either one of or you, or you talking to him separately, make it clear to Mr. Edwards that anything he said could be used against him even though it was not put on tape?

A. Yes, sir. Detective Marmion explained that to him rather thoroughly.

Q. Did he indicate to you and to Detective Marmion that he understood that, but he still did not want his words down on tape?

A. Yes, sir.

MR. LINGEMAN: That's all I have.

THE COURT: Mr. Brogna.

MR. BROGNA: That's all. Thank you.

THE COURT: You may be excused. Thank you.

(Witness excused.)

MR. BROGNA: May it please the court, I initially put Mr. Edwards on for one or two questions. I would like to put him back on and [30] question him on further direct examination.

THE COURT: You may.

ROBERT EDWARDS,

the defendant herein, was thereupon recalled as a witness in his own behalf, and having been previously duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. BROGNA:

Q. Do you recall being arrested on January 19, 1976?

A. Yes.

Q. At what time approximately did that take place?

A. Oh, about four thirty.

Q. When, in the morning, afternoon or what?

A. In the evening.

Q. And who arrested you, do you remember?

A. I think the two Buntings. I think Sgt. Bunting and his son.

Q. Sgt. Bunting and Steve Bunting?

A. Right.

[31] Q. Where did this take place?

A. On 1022 East Twenty-First Street on the south side.

Q. And how did the arrest take place?

A. Well, I was with my—I was with my fiancee and with my kids and a police—the Buntings knocked on my door. They was looking for my house.

They seen a black Cadillac outside and they was looking for the house that the black—of the person who owned the black Cadillac.

So they knocked on my door and they asked me—they asked me was my name Robert Edwards. I told him yes, my name was Robert Edwards.

He said, "We have a warrant for your arrest for first degree murder and armed robbery."

Q. And then what happened?

A. So I stepped outside and they start—I asked them what are they talking about.

So one grabbed me on the arm and was trying to jerk my arm up and slam me against the building.

Then they—I told them to stop [32] hitting me and slamming me on the back and they had their guns pulled out.

Then my kids came around and they had their guns pulled out. So I made it away from the scene so they couldn't shoot my kids.

Q. Were you eventually secured or arrested?

A. Right.

Q. Were you put in a police car?

A. Yes, sir.

Q. Did they attempt to talk to you right outside your place there?

A. No, they didn't.

Q. At any time did Sgt. Bunting or Steve Bunting, the other detective, read you your Miranda rights?

A. No. It was a detective—it was a black policeman in a car. I don't know his name.

He just handcuffed me and put a gun in my head and put me in the car.

Q. Where did they take you?

A. To the precinct.

Q. Where did they take you in the police station?

A. Upstairs somewhere. I don't know where. I was on a high floor.

Q. Did they talk to you up there?

[33] A. Yes.

Q. Who talked to you?

A. I remember it was Sgt. Bunting.

Q. Prior to talking to you, did he read you your Miranda rights somewhere along the line?

A. He—oh, yes. He said, "You have a right to be—remain silent and anything you say can be used against you in a court of law."

Q. Did you understand what he read to you?

A. Yes. Yes, I did.

Q. Okay. Did you proceed at that time to talk to him?

A. I told him that I didn't have nothing to say to him.

Q. Then what happened?

A. Then I—I told him I wanted a lawyer.

Q. When did you tell him you wanted a lawyer?

A. When I was in there and he asked me about a murder. He had a confession from Calvin Reed and he had a confession from Soto and he wanted me to talk.

I told him, "I don't know what you're talking about." I said, "Well, I need a lawyer."

He said, "All we want is your side [34] of the story."

I said, "I don't have nothing to hide and I'll tell you my side of the story."

Q. You gave him a statement.

A. Yes, I did.

Q. Was that statement recorded?

A. Yes, it was.

Q. How long did that all take, if you know?

A. I think it was about a hour forty-five minutes or a hour.

Q. Do you remember who was present when that statement was taken?

A. It was Bunting.

Q. Who, Sergeant or the other one?

A. The sergeant. I remember him. But it was fade (sic) in my mind about the other Bunting. There was so many police coming back and forth questioning, I don't remember.

Q. You mean there was more than Bunting?

A. Right. There was another came in. It might have been his son. And another came in. It was back and forth. I don't really remember it's been so long.

Q. What happened after you gave the taped statement?

A. Well, he asked me, he said, "Is this [35] your side of the story?"

I said, "Yeah, this is my side of the story."

He said, well, he know—he said that he know that Soto confess, you know. Calvin Reed confessed.

And he said he was going to catch Willie Williams and Willie Williams was going to confess.

Q. Who told you this?

A. Bunting.

Q. Sgt. Bunting?

A. Right.

Q. He wasn't satisfied with your statement?

A. No. He said that—that he knew that I was lying, you know.

Q. Oh.

A. Right.

Q. And anytime—what happened after that, after you

gave the statement and he told you that he wasn't satisfied?

A. I told him that I really didn't have nothing to say, I wasn't involved in nothing. I didn't really have nothing to say to him.

But that didn't stop him. I say—I asked him about a attorney. He said, "You [36] want to call a attorney?"

I said, "Yes, I want to call a attorney."

He said, "I have a attorney you want to call."

Then he rang the number for the attorney and I looked at it and it was the district attorney and—

Q. Did you end up talking to a district attorney that night?

A. Right.

Q. Do you know who?

A. I don't know who it was. Just at the other end of the line it was a district attorney.

Q. Was that Randy Stevens?

A. I don't know. I found out later on it was Randy Stevens.

Q. What did you talk to the district attorney about?

A. He called and I said, "Who is this?"

He said, "This is the district attorney."

I said, "I don't have nothing to say to you," and I hung up. It was about three or four seconds.

Q. Was there talk about a deal?

[37] A. I don't remember no deal. The deal Bunting was asking me about, a deal—

Q. That's what I'm getting at.

Q. That's right.

Q. What do you remember was the talk about the deal no matter who said it?

A. The deal was the confession.

Q. They wanted a confession from you?

A. Right.

Q. What were you supposed to get?

A. I was supposed to get a deal to make any sentence more low and testify.

Q. Did you talk—did Sgt. Bunting talk to you about that?

A. Right.

Q. And what happened, was a deal—did you strike a deal, did you make a deal.

A. I didn't want to make no deal. I said, you know, well, I had to talk to my lawyer. I wanted a attorney.

Q. Did you specifically ask for a lawyer before you made a deal?

A. That's right. I asked for a attorney.

Q. Do you remember talking to this other officer, Detective Hallums?

A. Yes, I did.

[38] Q. Now, he's a police sergeant.

A. Yes, I did.

Q. Did you ask to speak to him?

A. No, I didn't.

Q. How did it happen that you ended up talking to him that day?

A. I was sitting in a room. No, I was coming—they had arrested me.

I see "Oh, say, oh, there go Barefield," when I was in the police station. He says, "There go Barefield."

I said, "Yeah."

They brought me in and my clothes was all dirty. They put me in a room and then started 'gating me' and after that Bunting went out and Hallums came in and set down and he asked me about a robbery.

Q. Did you ask Hallums to come in and talk to you?

A. No, I didn't.

Q. Did he read your rights to you?

A. He didn't read nothing to me. He just started talking to me with a robbery.

Q. Did you talk to Hallums?

A. I told him I wasn't involved in no robbery. That's about all I told him.

[39] He says a couple of questions that he wanted to know about some robberies and I said I wasn't involved in no robberies.

Q. Do you remember what he said when he left?

A. He just got up and said—maybe I'm not—I just told him I wasn't involved in none.

He got up and went out the door. That's all he did.

Q. Then what happened?

A. Then Sgt. Bunting came back in.

Q. What did he want this time?

A. He wanted a confession.

Q. How do you know?

A. The way he was talking, you know, about Reed was going to testify and this and that.

Q. So he is—he kept on throwing up these other statements to you.

A. Right.

Q. Did there come a time when he stopped talking?

A. Yes. He seen that I wasn't going to confess, make, you know, he seen that I wasn't going to confess.

Q. Tell me what happened.

A. I remember that it happened, he kept on [40] asking me about the Conga Bar.

He set and he drew some construction route. He put it on his desk and I told him I didn't know about no constructions and he draw a—

Q. You mean a diagram?

A. Diagram.

Q. Of the bar?

A. Diagram. Right.

He drew a diagram of the place and about Tenth Avenue, whatever it happened.

Q. When was he doing this?

A. Oh, after—after I had gave him my statement then he started a drawing diagrams.

Q. Was this after Hallums talked to you?

A. Right.

Q. How long were you down there at the police station all together, if you recall?

A. I'd say I got there at four thirty and I didn't leave until real late at night. I think I got in jail about twelve or one at night. I don't know. Real late.

Q. Were they tallking to you most of the time?

A. When they took me—when they took me out—when they took me out to go to what's [41] its name, I heard one of them say, "Put him in solitary."

I went in and I was sent to solitary. I was put in with a—

Q. Wait a minute. Who did you hear say put him in solitary?

A. One of the police that took me down there. I don't remember who it was.

Q. Was it one of the detectives who had been interrogating you?

A. That's right. I don't remember who it was.

Q. Where were you put when you went to the Pima County Jail?

A. I was put in solitary. Confined.

Q. Were you given any reason?

A. No.

Q. By either the detectives or the jail personnel why you were put in solitary?

A. No. No. No, I couldn't get no reasons.

Q. Were you given any?

A. No. No reason. They just put me in solitary.

Q. When you say solitary, you mean a room with a—

A. A hole with slats in it.

[42] Q. Were you in solitary with anyone?

A. Yes, I was in solitary with a brother. I think his name was Al J. Carter.

Q. You mean another black man?

A. Right. A black dude.

Q. Do you recall what happened, the next thing you remember, the next time you talked to anybody?

A. Well, I stayed in solitary until about nine thirty, nine fifteen. We supposed to have went to arraignment and that's when Marmion and I forget another one just got up on the stand come out there.

Q. And where were you taken?

A. I refused to come out of the hole.

Q. What do you mean?

A. I refused. I told them I didn't want to talk to nobody.

But I was trying to remember the D.O., but he told me I had to talk to him.

Q. Did they take you out of the cell?

A. Solitary.

Q. Yes.

A. Yeah, to go talk to Marmion and his partner.

Q. Where did you talk with Marmion and his [43] partner?

A. Over at the attorney booth.

Q. One of the attorney booths?

A. (Witness nods head.)

Q. Did they have anything with them?

A. They had a tape recorder—they had a tape recorder and they had another tape. They had some tapes.

Q. All right. Do you recall the conversation started when you first saw Marmion and this other detective, the best that you can remember it?

A. Well, first, I came in the door and Marmion was

sitting over here and the detective Hallums was standing right at the side.

I came in the door and—

Q. Hallums or Milne?

A. The one that just testified.

Q. Detective Milne.

A. Milne, right.

Milne closed the door and he said—he said, "Mr. Edwards, I'm from the Homicide—I'm from the Homicide Detective," something like that.

He said, "I'm here on behalf of—to investigate a murder."

[44] Q. All right. What did you do, did you say, if anything?

A. I told him, I said, I—I told him that I didn't want to talk to him.

Q. Then what happened?

A. Then he said, he said, "Now," he said, "we"—he say, "Now"—he asked me—he had a tape recorder and he said—he said, "Now, I have just arrested Soto. Don't play no games with me. I know what Soto talk about."

I say, "I don't even know Soto."

He said, "Yes, you know Soto. Do you want to hear Soto?"

And I say, "Yeah." And he turned the tape recorder on.

Q. Did you hear Soto?

A. Right.

Q. Then what happened?

A. He played the Soto tape nine or ten minutes and then he cut it off.

Q. Then what happened?

A. Then he said—he said they had—he told me they had caught Willie Williams, right.

Q. Okay. What happened?

A. And then he told me, he said it was a [45] little

thing about going—he said—he told me—he said, "I see that you have—you have already—you have already given the D.A."—I mean not the D.A., but "the detectives a jive statement."

He said, "Now, you going to play ball with me?"

I said, "Well, I don't know what you're talking about."

He said, "Well, this can help you. I can talk to the D.A. and give you a break, you know."

I said, "Well, what kind of a break?"

He said, "Well, I can talk to the D.A. and give you a break."

I said, "Man, I wasn't involved in nothing."

He says—he says, "You know—you know how the ball is played. You are a old pro at this game."

Q. Did you eventually give them a statement, talk to them?

A. Right.

THE COURT: Who said this?

MR. BROGNA: Marmion.

[46] THE WITNESS: Marmion.

Q. (By Mr. Brogna) Was there any talk about taping?

A. Right.

Q. Do you recall what that talk was about?

A. I just told him that I didn't want nothing, you know, used against me in the court. I didn't know too much about law, but I just told him I didn't want nothing used against me in a court of law.

I really didn't understand, but that's what I told him.

Q. Do you remember talking about taping a statement?

A. Of who?

Q. You.

A. Oh, yes. They said they wanted me to make a taped statement.

Q. Then what happened, what did you do?

A. I told him I didn't want to make no taped statement because it would be used against me in a court of law.

Q. Do you recall them saying, "If you talk to us, or don't make a taped statement, we are still going to shove it down your throat"?

[47] A. No, sir, they never said that.

Q. You went ahead and talked to them?

A. Yes, I talked to him.

Q. On Friday do you recall saying you didn't give a statement to them?

A. I—on Friday I said I didn't give a statement. The D.A. was talking too fast. I was confused.

Q. Did you give a second statement about the LaConga or didn't you?

A. Yes, I did.

Q. You requested that Sergeant Bunting send somebody out to the jail—

A. No, I didn't.

Q. —to see you and talk to you further?

A. No.

Q. Did you request that somebody pull you out of solitary confinement?

A. No. I refused to come.

Q. But you went.

A. They told me I had to come.

Q. Who told you?

A. A D.O., you know.

Q. A detention officer?

A. Right.

Q. Do you remember his name?

[48] A. I have been trying to remember his name, but I can't. It's been a long time. I'm vague.

Q. When did you go to court that day?

A. I went to court that afternoon about one o'clock.

Q. How long after they were out and talked to you?

A. Before I went to court?

Q. Yes.

A. I think—

Q. In other words, when they were finished talking to you how long was it before they finally took you down to court?

A. Oh, after they talked to me about a hour, two hours. I was took to court in the afternoon. I was tooken to the same arraignment that Williams was tooken to in the afternoon.

MR. BROGNA: I have no other questions.

THE COURT: Mr. Lingeman.

**CROSS-EXAMINATION**

BY MR. LINGEMAN:

Q. Mr. Edwards, you're a pretty strong fellow.

A. I'm what?

[49] Q. You're a pretty strong fellow, a pretty tough guy.

A. I'm not too tough.

Q. Would it be fair to say that it took three officers to arrest you?

A. Hum?

Q. Would it be fair to say that it took three police officers to arrest you?

A. No. It just took one.

Q. Just one?

A. Right.

Q. How many was there?

A. Bunting and Stevens and a brother, a black officer.

Q. You ran away from the first two, right?

A. Right.

Q. And the brother, the black officer tackled you, caught you.

A. Right. Right.

Q. Then the other two officers caught up.

A. Right.

Q. And then there was a fight between all four of you.

A. No.

Q. No?

A. No.

[50] Q. You just said you got three.

A. That's right. They picked me up and handcuffed me and put a gun to my head and put me in the car.

Q. When you were at the police station nobody told you, but you picked up the phone and it was an attorney.

A. Yes, it was the D.A.

Q. When did you learn that it wasn't the attorney you thought it was?

A. When the man at the other end of the phone said it was a district attorney.

Q. Do you recall that conversation pretty clearly?

A. No, I don't.

Q. Can you tell me, to the best of your recollection, what you remember that man on the other end of the phone saying?

A. He told me he was the district attorney and I said I want a attorney.

Q. He said, "I'm a district attorney"?

A. That's right.

Q. What else did he say?

A. It was a few seconds. It wasn't really no—

Q. Did he try to get you to make a state-[51]ment?

A. No. No, he didn't.

Q. What did he say?

A. He just said he was a district attorney.

Q. Last Friday I asked you three or four times if you gave a statement to Detective Marmion and Detective Milne on the day following your arrest and didn't you tell this court under oath that you never gave them a statement implicating yourself?

A. I never gave them a first time.

Q. Do you remember last Friday my asking you several times when you were under oath whether or not you had given detective Milne and Detective Marmion a statement about your involvement in the LaConga Bar robbery?

A. Like I told you, I didn't understand you. You was talking so fast.

Q. You didn't understand any of the three or four questions I asked you?

A. No.

Q. Isn't it a fact that you decided afterwards that you better tell the truth in this court and—

A. I'm telling the truth all the time.

THE COURT: Just a minute, now. Mr. [52] Edwards, don't interrupt the question and, Mr. Lingeman, let him finish his answers. Start over.

Q. (By Mr. Lingeman) You were lying last Friday, were you now?

A. No, I wasn't.

Q. Did you talk to—with your attorney afterwards?

A. No. My attorney—

Q. Excuse me.

THE COURT: Just a minute. We can only get one at a time.

THE WITNESS: I'm sorry.

Q. (By Mr. Lingeman) That it hurt your case for you to make up a story like that and you'd better tell the truth. Did your attorney say something like that to you after the hearing on Friday?

A. No, he didn't.

Q. You just decided to come in here and decided to tell the truth, that you did in fact give a statement?

A. I just told the truth.

Q. Is it the truth that you asked for a lawyer with Officer Hallums, you asked for a lawyer when he talked to you?

A. I don't know who Hallums is.

[53] Q. The uniformed officer that came in and testified a few minutes ago.

A. He didn't give me time to ask. He wasn't in there for a couple of seconds.

Q. Did you ask Sgt. Bunting, the man involved in your arrest, did you ask him for an attorney, also, is that your testimony?

A. Yes, I did.

Q. Did you ask Detective Marmion and Detective Milne for an attorney, also, when you talked to them the next—

A. I didn't ask to see them.

Q. I know, but when you saw them did you ask for an attorney?

A. They knew I wanted a attorney.

Q. But you didn't ask for one.

A. I didn't think you had to keep asking for a attorney over and over and over.

Q. How many overs and over and overs and over did you ask for an attorney?

A. I asked for a attorney about four times.

Q. How many police officers did you indicate this to?

A. There was so many coming in I don't remember.

[54] Q. Was Detective Hallums one of them?

A. Holmes? I don't understand.

Q. The man with the uniform today, the sergeant.

A. He wasn't in there but a couple of seconds. He

asked me about a robbery and I told him I didn't know anything about it and he didn't hassle.

Q. Was Detective Sergeant Bunting one of them?

A. Yes.

Q. How about Detective Marmion, was he one of the ones you asked?

A. I thought he knew I needed an attorney.

Q. How about Detective Milne?

A. I don't know.

Q. You said you asked at least four different times.

Can you give me a better explanation of who these people were you kept asking for an attorney?

A. I asked Sgt. Bunting for a attorney, to be represented by a attorney.

I asked numerous times, but they kept on coming in and—but, like I said before, I couldn't tell you because it's vague in [55] mind because there was so many police coming in.

Q. Do you remember Detective Marmion and Detective Milne explaining to you that if you talked to them whatever you said they could testify to it in a court; do you remember that?

A. No. They never told me. If I knew this, I wouldn't be up on the stand now.

Q. Did you hear Detective Marmion testify here in court?

A. Oh, yes. I heard him.

Q. Did you hear Detective Milne also testify to that here in court?

A. Yes, I heard that.

Q. And that wasn't correct?

A. No, that wasn't correct.

Q. You stated you were booked into the Pima County Jail about one o'clock.

A. About that.

Q. Wouldn't it be fair to say you were booked into the Pima County Jail about seven o'clock, about three hours after you were arrested?

A. It was real—it was real late. It was like nine o'clock.

Q. Why don't you think about it for a while and tell me if you think it was closer to [56] seven o'clock rather than midnight.

A. It was real late. I don't remember. Real late.

Q. There are records that reflect the time. Can you give me your best estimate?

A. I'll say, like I said before, it was eight or nine or 12 o'clock, but it was—

Q. Wait a minute. Wait a minute. Was it around eight o'clock or—

THE COURT: Just a minute. The attorney is asking a question and then you wait and you answer. Then the attorney has to start over again with a question.

Mr. Lingeman.

Q. (By Mr. Lingeman) Could you give me your best idea of what time it was that you were booked into the County Jail, six o'clock, seven o'clock, eight or later?

A. As I said, I can't approximately remember. All I can say it was very late. To me it was about eleven or twelve, twelve o'clock.

MR. LINGEMAN: Okay. I have no further questions.

THE COURT: You may step down.

MR. BROGNA: I have no further questions.

[57] THE COURT: Defendant Edwards rests on the Motion to Suppress except for argument, of course.

Mr. Lingeman.

MR. LINGEMAN: Detective Marmion very briefly.

VICTOR Z. MARMION,

was thereupon called as a witness in behalf of the State, and having been previously duly sworn, was examined and testified as follows:

THE COURT: Proceed.

**DIRECT EXAMINATION**

BY MR. LINGEMAN:

Q. Do you know approximately what time it was that Mr. Edwards was booked into the Pima County Jail?

A. Approximately 7:00 p.m.

MR. LINGEMAN: Okay. That's all.

MR. BROGNA: I didn't have a chance to object.

THE COURT: You may object and your [58] objection may precede the answer.

MR. BROGNA: I didn't get a chance. I'm going to ask that that be stricken and if he is going to show the time, then he bring in the records the proper way.

I ask that that answer be stricken.

MR. LINGEMAN: All it means is that I'm going to have to wait until tomorrow when Detective Steve Bunting is here.

THE COURT: I don't think the objection is good if Detective Marmion was there. But right now it looks like foundation.

MR. LINGEMAN: He wasn't there.

THE COURT: Sustained. But I'll give you time to produce the records.

MR. BROGNA: I would like to talk to Steve Bunting.

MR. LINGEMAN: That's it then.

THE COURT: Sustained. And the answer is stricken.

MR. LINGEMAN: That's all I have right now.

THE COURT: Mr. Brogna, you can't have anything, I guess.

You may step down.

(Witness leaves the stand.)

[59] THE COURT: Do you have other witnesses?

MR. LINGEMAN: Not now, Detective Bunting is not in town, Steve Bunting.

THE COURT: Steve Bunting?

MR. LINGEMAN: Is not in town. That's why he wasn't called last week or today. I didn't think we were going to need to call him.

I talked to Carmine before and he didn't think there was a need to call him.

THE COURT: Do you want this hearing continued to produce records?

MR. LINGEMAN: I guess so. Detective Bunting won't be back this afternoon. He is out of town. He has been out of town.

THE COURT: Do you want until tomorrow morning?

MR. LINGEMAN: Yes.

THE COURT: Mr. Brogna.

MR. BROGNA: That's fine, Your Honor.

THE COURT: All right. I have to get my calendar.

MR. LINGEMAN: I might say it won't take me very long. A minute or two.

Your Honor, I may be able to get Sergeant Bunting who may be able to answer this [60] question right now.

THE COURT: All I need to know is whether you want to do it now or then.

We stand at recess for ten minutes.

MR. LINGEMAN: Thank you.

THE COURT: We'll continue with the Edwards motion unless you're not ready.

If you're not ready, we'll continue with the Williams Motion except Mr. Noe isn't here.

MR. LINGEMAN: I'm ready with Sergeant Bunting on the Edwards motion.

THE COURT: All right.

[61] LARRY BUNTING,

was thereupon called as a witness in behalf of the State, and having been previously duly sworn, was examined and testified as follows:

THE COURT: Good afternoon.

THE WITNESS: Good afternoon.

**DIRECT EXAMINATION**

BY MR. LINGEMAN:

Q. Please state your name and occupation.

A. Larry Bunting, Police Sergeant, City of Tucson.

Q. You are the same Larry Bunting that testified earlier in this motion?

THE COURT: The record may so show.

Q. (By Mr. Lingeman) Sergeant Bunting, when you arrested Mr. Edwards, could you explain the physical circumstances surrounding that arrest very briefly?

A. Well, there was a—he resisted arrest and a struggle ensued and eventually he was subdued and taken to the station.

Q. Between Mr. Edwards and yourself and who else?

A. Detective Steve Bunting and a uniform [62] officer.

Were all three of you police officers engaged in trying to make the arrest on Mr. Edwards?

A. Yes, sir.

Q. Did you have some difficulty doing that, even all together the three of you?

A. Yes, sir.

Q. About what time—I guess it was about four o'clock, is that right, when the arrest was made?

A. That is correct.

Q. About what time was it that the interviews with Mr. Edwards were completed that afternoon or evening, the total interviews?

A. In the neighborhood of six thirty to seven, I would guess.

Q. And at that time was Mr. Edwards taken to the County Jail?

A. Yes.

MR. LINGEMAN: That's all I have.

THE COURT: You may cross-examine.

**CROSS-EXAMINATION**

BY MR. BROGNA:

Q. During the time from his arrest and [63] the time he spent in the police station, during most of that time was there someone talking to Mr. Edwards?

A. Yes.

MR. BROGNA: I have no further questions.

MR. LINGEMAN: Nothing, Your Honor.

THE COURT: You may be excused.

(Witness excused.)

MR. LINGEMAN: That's all I have.

THE COURT: Mr. Brogna?

MR. BROGNA: I have nothing further.

THE COURT: Mr. Brogna, do you want to argue the motion?

MR. BROGNA: Very briefly, Your Honor.

In addition to the cases that are cited in Mr. Polis' memorandum, I would call the Court's attention, first of all, to the one case cited in particular in the Polis memorandum, State v Saube, 112 Ariz., 576.

THE COURT: Mr. Bailiff, will you get 112 Arizona for me?

MR. BROGNA: I think the case is appropriate because in that particular case the detective did attempt to elicit a statement at one time and the statement was not procured.

(CAPTION OMITTED)
**PROCEEDINGS MARCH 8, 11, 14, 16, 1977**
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[37] That is not the situation in this case. The Court finds that there was no request from these officers that the Defendant Williams be furnished with any methadone or any other drugs, that they did not make any promises to him that he would receive any drugs in response or after making his statement.

The Court finds that the Defendant Williams' statement was voluntary and the State may use it in the presentation of their case.

The Defendant Edwards' Motion to Suppress, it is ordered that the motion is granted.

The Court wants to fully explain the reason on that for the record and further to show on the record that even though the Court is prohibiting the State from using it in their case, that the Court finds the statement was voluntary except for the violation of Miranda which the Court is going to go into, and that the State may use the statement for cross-examination in the event the Defendant Edwards takes the stand. They may use the statement in rebuttal should it become otherwise material and proper rebuttal.

Now, the Court again is basing this ruling on the officers' testimony which the [38] Court finds to be the credible evidence before the Court on that particular motion, not Mr. Edwards' testimony.

The officer's testimony, Sergeant Bunting, is that Mr. Edwards was questioned at the police station following his arrest and before he was ever taken to jail. That at that time Mr. Edwards gave a tape-recorded statement which has been referred to in his case as the alibi statement. That the officers did not believe that statement.

That after that there was a discussion initiated by Mr. Edwards concerning a deal. That there was further conversation between Mr. Edwards and the officers which was concluded by Mr. Edwards saying, in effect, that he would wait until he got his attorney before he made any deal.

The Court believes and finds that the deal so far as Mr. Edwards' state of mind and concept of it is concerned, involved him making a statement, presumably a true statement, in view of the fact that he had already made the other one, in exchange for some leniency, some lesser conditions or something of that nature.

Under Miranda I think that this is, and under the Sixth Amendment, at least an [39] indication in some way, to use the words of Miranda, that Mr. Edwards intended to have an attorney and intended not to make any statement until he was represented by counsel.

Following that, and I note also at that point the questioning stopped, and I believe that the questioning would not have stopped and Sergeant Bunting would not have stopped questioning Mr. Edwards had he not believed that at that point there had been such a request made.

Then the next day officer Marmion goes to the jail on the morning of the day that Defendant Edwards would have gone to his initial appearance and gotten an attorney, which the detective knew.

Detective Marmion goes to the jail on his own. There is no evidence to the contrary, and questions the defendant.

I don't think there was anything wrong, any compulsion, anything of that kind on the Defendant Edwards by Detective Marmion. There is no evidence of it that the Court believes, but, nevertheless, the right which Mr. Edwards had exercised the day before with Officer Bunting had been ignored and it doesn't matter whether [40] Detective Marmion knew it or not, it was contrary to Miranda. That's contrary to what Miranda says.

Now, I have studied the Arizona cases in this record as thoroughly as I know how. I think that the case is in point with the Saube case. That involves the defendant asserting his right to remain silent.

I think this case involves the defendant asserting his right to have an attorney before he made any statement, but the two are common rights under the Miranda, one under the Fifth and one under the Sixth Amendment. I think Saube is controlling on this Court.

I have also studied the Edwards case. I don't think it lends a great deal to this case. This is not the Edwards case. It is not a case of the detectives continuing to hound the defendant and things of that nature. It is not an extreme case at all. Edwards was a most extreme case.

I have also studied State v Burger, 105 Ariz., 553, and which overrules State vs. Herman. That's the case in which the Supreme Court said that a statement can be voluntary and used by the State even though the defendant is [41] represented by an attorney.

In that particular case the statement was given at the County Jail to the officers even though the defendant had an attorney representing him in the case in court.

But in that case it was the defendant who requested that the officers come to the jail and talk to him. That is not this case.

I think if you had that one additional fact in this case that the Court's ruling would be different. But this is a case of the officers going to the jail after Mr. Edwards had at least in some way indicated that he intended to have an attorney in this case before he made any statement.

That will be the Court's ruling on that matter.

Now, I want to ask counsel a question. I want to ask you if in view of the Court's rulings anyone believes that the matter of severance as to the two defendants should be reopened. Mr. Lingeman.

Mr. Lingeman: May we approach the bench on this with counsel—I don't know if counsel are still representing—

THE COURT: I don't know who I meant

[55] Tucson, Arizona
March 14, 1977
Monday, 11:45 a.m.

THE COURT: Case No. A-30683, State vs. Robert Edwards.

The Court set this as the time for hearing the defendant's own Motion for a Redetermination of Competency

and after my ruling last Friday Mr. Lingeman came in and told me that he had filed this Motion for Reconsideration of the Order Granting the Motion to Suppress, Confession. I told Mr. Lingeman I would hear it this morning. I thought I should.

Are you prepared to respond to that, Mr. Brogna?

MR. BROGNA: Yes, Your Honor, I have been provided a copy.

THE COURT: I'll hear from Mr. Lingeman, if you want to add anything to your written motion.

MR. LINGEMAN: Your Honor, the motion just indicates, of course, as Mr. Brogna has seen, that I found a case that deals specifically with that which the Court felt there was a problem.

I say that because the Court indicated specifically the reasons for its ruling when it granted the Motion to Suppress, the reason [64] were properly before it.

So for the reasons that I have indicated, and for the apparent specificity of this decision, I would urge the Court to reverse its earlier ruling.

THE COURT: Well, I'm going to reconsider the matter and change the ruling.

I think that I was wrong, based on the law that I'm bound to follow.

Travis was decided by the Court of Appeals January 27th, 1976, and Saube January 29th, 1976 by the Arizona Supreme Court.

But in the Travis rehearing our Court of Appeals was denied March 4th, 1976, and the Supreme Court denied review March 23rd, 1976, all coming after the decision in Saube.

I think Travis is exactly in point even down to the same officer, as exactly in point as you could get two cases with this kind of a situation.

The Court was not aware—I want the record to show I remembered Travis once it was handed to me, but I didn't recall it at the time I made this ruling. It wasn't annotated

in the place I was looking and I just was not aware of it. I think it's controlling on the [65] Court. I think I have to follow it.

I had, of course, studied Mosley extensively before making that ruling on Friday and I had thought that Mosley, the controlling thing in Mosley was that the second officer had talked to him about a different crime. I thought that was an exception that the Supreme Court had grafted on Miranda, but Judge Howard at the Court of Appeals, with the Supreme Court denying review, has stated that Mosley means a great deal more than that and I'm going to change the ruling and the defendant's Motion to Suppress is denied as to all the statements and the Court finds the statements to be voluntary.

Now, I'll hear this matter about competency, Mr. Edwards.

MR. EDWARDS: Your Honor, I have not prepared the motion to competency. I haven't had time to study the hearing and study the motion.

You gave a order to give time, but we have not had time to study for trial. I haven't even had time to study the material for rehearing.

I had a witness doctor and he's not here and I have just not had the time.

You gave a order or something for the sheriff for us to have time to review the

(CAPTION OMITTED)

**PROCEEDINGS MARCH 21, 1977**

**A-30683**

[2-58] Q. Milne?

A. Yes.

Q. Detective Mr. Milne, that was on the date of the 20th you say.

A. The 20th of January, yes.

Q. About nine thirty in the morning?

A. Roughly, yes.

Q. How could—how did you come out to the jail, did anybody tell you to come, did your—your lieutenant or I know they have a top person there, ask you to come and interview me?

A. My supervisor instructed me to accompany Detective Marmion, yes.

Q. Who was your supervisor that asked you to come and interview me?

A. Sgt. Bunting.

Q. So Sgt. Butning asked you to come to interview me to make a confession, am I correct?

MR. LINGEMAN: Objection. That's not what the witness testified to.

THE COURT: You may answer. Overruled.

THE WITNESS: Iwas instructed by Sgt. Bunting to accompany Detective Marmion to the Pima County Jail where you were located at the time and conduct an interview.

Q. (By Mr. Edwards) Did Sgt. Bunting tell [2–59] you that he had already interviewed me?

A. No, sir, he did not.

Q. You came out there the morning about nine thirty and you were with Detective Marmion.

A. Yes.

Q. When—do you remember where I was? I mean, where you was to the interview, where you hold the interview that morning?

A. Yes. It was in one of the attorneys' booths.

Q. Mr.—before you interview me, I didn't have a attorney then, did I, when you come to interview me?

A. I don't know if you had one at that point or not.

Q. You know how I think, Mr.—Mr. Milne, you have been in homicide—how long have you been in homicide?

A. I was in homicide approximately 13 months.

Q. Thirteen months. So I think you know how the Court procedures go.

A. Somewhat.

Q. When you came down that morning, I was arrested January 19th, I think you recall that.

A. Yes.

Q. And I was brought to jail that night and [2–60] that morning I was supposed to have went to arraignment; is that correct?

A. It would be the following afternoon.

Q. I never went to arraignment while you was supposed to come down and interview me, am I correct?

A. You had not been to any type of a court arraignment prior to the time we talked to you.

Q. Mr. Milne, is arraignment where attorneys is appointed?

A. In some cases, yes.

Q. So I never had a attorney, am I correct, when you investigated—interrogated me.

A. I don't know, Mr. Edwards. It would be very possible for you to have a private attorney.

Q. So you're telling the Court that Sgt. Bunting asked you to come see me on that morning.

A. Sgt. Bunting instructed me to accompany Detective Marmion.

Q. Mr. Milne, on that—on that—when we can come down to recall that when you was in the little—the little law booth or attorneys' booth or what we can refer to—the D.O., did you send a D.O. to come get me?

A. A detention officer?

Q. Right.

(CAPTION OMITTED)

**PROCEEDINGS MARCH 28, 1977**

**A-30683**

[9] THE COURT: Good Morning, Mr. Edwards, you may proceed.

MR. EDWARDS: My next witness is Larry Bunting.

LARRY BUNTING,

was thereupon recalled as a witness in behalf of the defendant and, having been previously duly sworn, was examined and testified as follows:

THE COURT: Detective Bunting was sworn earlier in this trial and is being recalled and is, of course, still under oath.

You may proceed, Mr. Edwards.

**DIRECT EXAMINATION**

BY MR. EDWARDS:

Q. Mr. Larry Bunting, am I correct, is that your name?

A. Yes.

Q. Did you give testimony to the Court that I—on the day of January 19th, 1976, the day you arrest me and took me to jail, didn't you give testimony that you never sent Milne over [10] to see me the next day?

A. That is correct.

Q. Can you occur that when Milne testified that he testified and said that you sent him that day?

A. Would you repeat that again, please.

Q. I'll repeat it and make it more clearly for you.

Mr. Milne testified and said that Larry Bunting—Larry Bunting, is that you?

A. That's me.

Q. Sent him on the next day, the 20th day, that you gave orders for him to go see me on the 20th.

A. I didn't tell him to go see you. I never told anybody to go see you.

I may have put two officers arriving together as I do occasionally, like assigning Milne to ride with Marmion, but I have never assigned Marmion to go see you or Milne to go see you.

Q. So we can indicate that Milne, he didn't—he just—he must have forgot that that you sent him or you didn't send him, am I correct?

A. I'm not sure what he testified to. I can only testify to my recollection.

[11] Q. Your recollection.

On October 9th, 1974, Mr. Bunting, was you ever—did you ever approach the crime—the crime that was recently—did you ever investigate the crime when it was over, the crime of the death of Mr. Mungiå, the robbery, was you on that investigation?

A. Yes, I was involved in the investigation of Mr. Mungia's death.

Q. Was you involved in the investigation on October 9th of 1974?

A. I believe that's the date it occurred. Yes, I was.

Q. Mister, did you ever find any articles or things in the investigation; did you ever find any fingerprints, did you ever find any—anything, guns, anything occurring to the crime?

A. I myself did not.

Q. Did you know about anyone finding any guns inside the place or anything, for instance, anything to identify the suspects?

A. To the best of my recollection, as I have not reviewed the reports to refresh my memory, I don't recall anything about guns, fingerprints being found.

There were fingerprints found. As

(CAPTION OMITTED)

**PROCEEDINGS APRIL 21, 1977**

**A-30683**

[61] LARRY BUNTING,

being first duly sworn, was examined and testified as follows:

THE COURT: The witnesses in this case are under the Rule so you'll have to leave the courtroom after you have finished testifying. You're not to discuss your testimony with anyone except the attorneys until the case is over.

Thank You.

**DIRECT EXAMINATION**

BY MR. LINGEMAN:

Q. State your name, please, and occupation.

A. Larry Bunting, Police Officer for the City of Tucson.

Q. How long have you been so employed?

A. Since 1960.

Q. What detail are you in right now?

A. I'm presently in the uniform division.

Q. At any time prior to this time were you in the homicide division?

A. Yes, I was.

Q. For how long?

A. Nine years.

Q. Were you the head of that division?

A. I was.

[62] Q. Up until when?

A. Couple of weeks ago.

Q. Are you familiar with the La Conga Bar robbery-murder that occurred back in October 1974?

A. Yes, I am.

Q. Did you take part in the investigation of that case?

A. Yes, I did.

Q. Was it your case or did you assign it to one of the men under you?

A. Detective Marmion was assigned as the lead detective.

Q. What does that mean?

A. It means he was the detective charged with the primary responsibility of investigating the case and my position was as a supervisor of the overall detail.

Q. January 19th, 1976, did you make an arrest reference that case?

A. Yes, sir.

Q. An arrest of the person by the name of Robert Edwards who also goes by the name of Willie Barfield?

A. Yes, Sir.

Q. Do you see that person in the courtroom?

[63] A. Yes, sir.

Q. Point him out.

A. Sitting at the defense table to Mr. Brogna's left wearing a blue shirt.

MR. LINGEMAN: May the record reflect the witness pointed out the defendant?

THE COURT: Yes.

Q. (By Mr. Lingeman) Can you tell us the circumstances of that arrest?

A. He was arrested per an arrest warrant. He was arrested on East 24th Street in Tucson, the evening of the 19th or about 4:00 in the afternoon.

Q. Who else was present?

A. Detective Steve Bunting.

Q. Any other uniform officers?

A. One uniform officer.

Q. How did you affect the arrest, what happened?

A. Went to the door of the apartment, identified our-

selves. Mr. Edwards came to the door, showed him a copy of the warrant. There was an altercation, struggle between us and he was eventually subdued and taken to the police station.

Q. Could you be a little more specific [64] about the altercation or the struggle?

A. He resisted. There was a struggle. Knocked down a block wall effect dividing the apartment. He started around the corner and a uniformed officer intercepted him and there was a struggle and he was handcuffed and taken to the station.

Q. Had you asked—had you advised him what the charges were, what the arrest was for?

A. I had advised him of the charge and showed him a copy of the warrant.

Q. Before he attempted to escape?

A. That's correct.

Q. He was subsequently apprehended?

A. Yes, sir, he was.

Q. Taken to the Tucson Police Department?

A. That is correct.

Q. Was he advised of his constitutional rights?

A. He was advised of his rights at the police station.

Q. Okay.

Were you present at that time?

A. Yes.

Q. Can you advise the jury of the exact rights of which he was advised?

[65] A. I read to him from this rights card. He was advised that you have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to the presence of an attorney to assist you prior to questioning, and to be with you during questioning, if you so desire.

If you cannot afford an attorney you have the right to have an attorney appointed for you prior to questioning.

He was asked: Do you understand these rights? He stated he did.

Now, having been advised these rights and understanding these rights, will you answer my questions? He stated he did and he talked to us after being advised of those rights.

Q. How long did you talk to him at that time?

A. That evening?

THE COURT: Just a minute.

MR. BROGNA: May we approach the bench?

THE COURT: Yes.

(Thereupon, a conference was had at the bench out of the hearing of reporter and the jury.)

[66] MR. BROGNA: During the course of questioning I didn't stand up at the time because Sgt. Bunting—Mr. Lingeman seems to always have this, but Mr. Lingeman characterized Mr. Edwards' movements at the time of the arrest: Is that when he attempted to escape? Yes, it is, before any objection could be made. It's a prejudicial characterization of the evidence which only the jury can make.

I think they know if they start talking fast they can get away with it with the defendant depending on himself. That's not fair. The defendant makes a motion for mistrial on the basis of those comments.

If the Court is not going to do that then an indication to Mr. Lingeman and Sgt. Bunting to give us a chance to object.

THE COURT: Mr. Lingeman, on the mistrial.

MR. LINGEMAN: I oppose the motion.

THE COURT: All right. The motion for mistrial is denied and I'll caution counsel.

(Bench conference concluded.)

THE COURT: Mr. Lingeman and Sgt. Bunting, in asking the questions and in giving answers, please hesitate long enough so that the [67] defendant may make a legal objection if he has one. Thank you.

Q. (By Mr. Lingeman) I think the last thing I was asking was how long you had your conversation at the police station?

A. Approximately two and a half to three hours that evening my total contact with the defendant.

Q. At some point in time was there a tape of the conversation between you and Mr. Edwards?

A. Yes.

Q. Okay.

Was that immediately or was that some time during the course of these hours?

A. It was fairly shortly after arriving at the police station he wanted to give this statement.

Q. Who else was present at the time that this formal statement was given?

A. Detective Steve Bunting.

Q. Just the three of you—yourself, Steve Bunting, and Mr. Barefield or Mr. Edwards?

A. That is correct.

Q. Okay.

What proceeded, if anything, that you [68] remember from this taped conversation?

A. Prior to the taped statement I was advised—advised him of his rights again on the tape.

Q. Okay.

Did you have any other conversation that wasn't on the tape before this?

A. Just a short conversation discussing the charges. I explained to him other people had been arrested in the case and they made statements incriminating him as an accomplice in the case and that we were interested in getting his side of the story, and he stated he had an alibi. He wanted to make a statement concerning his alibi.

Q. Do you have that tape with you?

A. I do.

Q. Could I have it, please?

Do you recognize what has been marked here as State's 3 for identification?

A. This is a transcription of the recording, tape recording.

Q. Now, what has been marked as State's 4 for identification?

A. This is the casette tape.

MR. EDWARDS: Your Honor, objection on [69] the grounds I previously argued on the grounds.

THE COURT: Overruled.

THE WITNESS: This is the casette tape of the statement given by Mr. Edwards.

Q. (By Mr. Lingeman) I move to admit State's 4 at this time, Your Honor, and State's 3.

THE COURT: I think defense already has a copy of this.

Three and four have been offered.

MR. EDWARDS: Yes, Your Honor. I would ask—I would like to ask questions of the witness—where was the tape at—

THE COURT: You may voir dire the witness.

**VOIR DIRE EXAMINATION**

BY MR. EDWARDS:

Q. Mr. Detective Marmion—Bunting; am I correct?

A. Yes.

Q. Where was this tape held?

A. At the police department with Detective Marmion.

Q. How long was it held?

A. It's been held since the statement was [70] taken?

THE COURT: Do you have any objection to the admission of the exhibit?

MR. EDWARDS: No.

THE COURT: Exhibits 3 and 4 will be admitted.

**DIRECT EXAMINATION (Cont.)**

BY MR. LINGEMAN:

Q. Detective Bunting, do you think you could play that tape for us right now?

A. Surely, if I could have a moment.

THE COURT: Do you have an extra copy of the transcript?

MR. LINGEMAN: No.

MR. BROGNA: Excuse me, before that's played I'd like to have an opportunity to read the exhibit myself. I just glanced at it. If the Court please.

THE COURT: All right. Here it is.

MR. BROGNA: Thank you.

THE COURT: We'll just wait until you have had a chance to read it.

MR. BROGNA: If it please the Court, I'd like to approach the bench.

THE COURT: All right.

[71] (Thereupon, a conference was had at the bench out of the hearing of the jury.)

MR. BROGNA: There is mention in the statement of the prior robbery. I think Mr. Lingeman knows of that and I think he should have brought it up to the court—to the court's attention. I thought I remembered it that's why I asked to read it again.

It is extremely prejudicial and should have been brought to the court's attention, it should be expunged.

MR. LINGEMAN: I haven't listened to the tape or read that statement in a long time. I'd be happy to look at it.

THE COURT: Well, it's clear to me that it's going to require that something be done so you can go on with the witness or other matters and then we'll do this in the absence of the jury before the noon hour.

MR. LINGEMAN: Okay.

(Bench conference concluded.)

Q. (By Mr. Lingeman) Approximately how long does this last?

A. I believe it's less than 30 minutes as I recall.

Q. Okay.

[72] Essentially this is a statement in which Mr. Edwards gave an alibi; is that correct?

A. That's correct.

Q. Okay.

Now, after this statement was completed what transpired in the way of conversation between you and Mr. Edwards?

A. There was further conversation between us concerning the charges.

Q. What was that conversation?

A. Basically Mr. Edwards wanted to make a deal. He talked about if I could give him a deal or the County Attorney's Office could give him a deal he then would give a statement concerning the events that occurred.

Q. What did you indicate to him?

A. Told him I was in no position to give him a deal and that—well, essentially we ended up calling the County Attorney, a member of the County Attorney's Office and the County Attorney talked to him over the phone, and it was left that Edwards wanted to wait until he had an attorney to make a deal for him concerning the charges.

Q. Okay.

[73] You said the County Attorney was contacted. Was that someone else in my office?

A. That is correct.

Q. Randy Stevens?

A. Right, Randy Stevens, the Chief Criminal Deputy.

Q. Was there—were you present when Mr. Edwards spoke with Mr. Stevens over the phone?

A. I was.

Q. What did you hear Mr. Edwards say over the phone at that time?

A. Basically that he wanted a deal to give his side of the story.

Q. He had already given his side of the story, hadn't he, on the tape?

A. The tape, yeah, but apparently there was a different story that he wanted a deal to give this information.

Q. Okay.

Another statement, a different statement?

A. Yes, sir.

Q. But did he ever give a different statement on that day?

A. No.

[74] Q. No deal was ever made between either you or myself and Mr. Edwards, also known as Mr. Barefield?

A. That is correct.

MR. LINGEMAN: That's all I have, Your Honor.

THE COURT: You may cross-examine and the County Attorney has reserved the right to recall this witness and if that is done then you may also cross-examine at that time.

**CROSS-EXAMINATION**

BY MR. EDWARDS:

Q. You are Sgt. Bunting?

A. That's correct.

Q. Arrested me when did you say?

A. 19th of January.

Q. 19th of January.

Who was with you on the time on the arrest, who was the other homicide detective?

A. He's named Detective Steve Bunting, no relation to me, and there was also a uniform officer.

Q. Right. So you say you approached the house, right?

A. Yes.

[75] Q. Did you have any guns with you or anything?

A. Oh, yes.

Q. You knocked on the door?

A. Yes.

Q. Did you know who came to the door?

A. Yes.

Q. Who came?

A. You came to the door.

Q. Was anybody in the surroundings when I came to the door, children playing outside or you don't remember?

A. I don't recall children. I recall there was a lady came to the door with you.

Q. That's when you showed me your warrant?

A. That is correct.

Q. You told me I was arrested for first degree murder and armed robbery, and armed burglary?

A. Right, and showed you the warrant.

Q. Did I step out or you pulled me out?

A. You were standing in the door and you started saying: No, no, no, and I pulled you outside and started to shake you down, and then that's when the struggle really started.

Q. You pulled me out of my house?

A. That's correct.

[76] Q. What kind of complex was there, do you remember?

A. An apartment complex.

Q. Apartment complex.

Do you remember—do you remember people outside?

A. No, I don't.

Q. You don't.

Did you have your guns drawn when you pulled me outside?

A. No.

Q. You never did?

A. No. Eventually I did pull my weapon, but not when I pulled you outside.

Q. Did on—did you pull your weapon around the kids?

MR. LINGEMAN: Objection, Your Honor. It's irrelevant and argumentative.

THE COURT: Sustained.

MR. EDWARDS: Detective Bunting, when I went to the police station that night I believe I gave you alibi statement, right?

A. That is correct.

Q. Alibi statement saying I was with another person, that's what I call an alibi statement.

[77] A. That's what I call it and that's what you called it in your own words.

Q. Did I call it alibi statement?

A. You said: I have got an alibi.

Q. I was with somebody else?

A. That's what you stated.

Q. Did you do all the questioning?

A. No, Steve Bunting also talked with you.

Q. No other policeman?

A. And Detective Halms talked with you at one point.

Q. Group of them talked to me?

A. The three of us talked to you.

Q. Just three?

A. Three.

Q. At any time when I gave you a taped statement at any time involve myself in the crime, when you even said about a deal did I involve myself in the crime?

A. In the taped statement.

Q. Even when I was talking to you after the taped statement?

A. Not directly, indirectly.

Q. Did I involve myself, did I tell you I was at the scene of the La Conga Bar?

[78] A. No, you never told me you were at the scene.

Q. Did I tell you me and others were at the scene of the La Conga Bar?

A. No, you didn't tell me that.

Q. Then a deal is supposed to have been raised after that.

A. That is correct, you stated that you had been around and understood how things worked and you wanted a deal.

Q. So I told you I wasn't involved and then I said I wanted to make a deal?

A. That is correct.

Q. Mr. Bunting, did you ever play any tape recorder to me and tell me anybody else was involved?

A. Yes, I told you other people were involved and I read part of a statement to you.

Q. From who?

A. As I recall, it was Kevin Reed, Cleveland Reed.

Q. You say he was involved?

A. Yes.

Q. That's when you took this taped statement?

A. I beg your pardon?

[79] Q. That's when you took the taped statement after you told me Kevin Reed was involved?

A. That's when you gave your alibi, yes.

Q. You forgot to read me my rights in there?

A. No, your rights were read to you twice. Once immediately after arriving at the police station and once again on the tape.

Q. Sgt. Bunting, you just said after you gave the statement then you gave me a taped statement—do you understand what I'm saying?

A. No, I don't understand.

Q. You said after you read these statements to me and then you told me I wanted to tell my side of the story, that I gave a statement. You never said—you never said you read no rights to me. You just said that, Mr. Bunting—are you changing your story now?

MR. LINGEMAN: Objection, that's not what the testimony was.

THE COURT: Sustained.

Q. (By Mr. Edwards) Mr. Bunting, did you ever after you took me—after you said I asked for a lawyer to make a deal, did you ever take me back to the police station, I mean, back to the jailhouse, you wasn't the one?

[80] A. No, you were taken to jail that evening, but I did not transport you.

Q. But I would—after the interrogation room where I was at I never told you I was involved in anything?

A. Not directly.

Q. All right—or I knew who was involved?

A. Not directly.

Q. And my statement—did I ever say I was involved?

A. Not directly.

Q. What you mean not directly, in my statement did I say I was involved?

A. In your statement you stated at one point you had heard some stuff on the street, but you didn't want to say.

Q. Just talk, did I say talk?

A. I don't recall the exact words. It's on the tape.

Q. You'd have to read the supplement?

A. I beg your pardon?

THE COURT: Are you looking for the statement—it's Exhibit C—I'm sorry—Exhibit 3.

Q. (By Mr. Edwards) Is this refresh your [81] memory?

A. What is your question now—your exact words, your exact words concerning that?

Q. Right, was anywhere I said that I was involved in that statement?

A. As I previously testified you never stated directly that you were involved.

Q. Or that I knew who was involved?

A. That is not correct. You implied in your statement that you knew.

Q. I implied that I knew who was involved?

A. Correct.

Q. What page was that, Detective Bunting?

MR. LINGEMAN: I'm going to play the tape in a short while. I wonder if we could reserve this area of cross-examination until the tape's played. It could save a lot of time.

THE COURT: Overruled.

THE WITNESS: Okay. Page 6—would you like for me to read it?

Q. (By Mr. Edwards) Yeah, you can read it.

A. Okay.

Q. Starting with the second question, question by myself:

"Question: Okay, have you talked to [82] Willie Williams about this?

A. No, sir. I ain't seen him.

Q. Okay, previously before we turned on the tape you said that you had heard who did it and knew what was behind it.

A. Yeah, like in the street, everybody heard, I heard, you know names and things.

Q. Okay. Who did you hear did it?

A. Oh man, I, I really, uh—I can't, I really can't, man, really state that now, man, 'cz, uh, really, really ain't me, you know. Uh, I heard some names, just like you all heard some names, I heard, you understand me, names of people, they was putting everybody in it, then, just, you understand, you understand, as far as I heard, it was some Mexicans who did it. And I heard it was some brothers who did it, it was, it was, you know, it was a lot of, a

whole different side of the story, you know. You know they really didn't know who did it, they said it was some Mexicans did it and then they turn around and say it was some brothers who did it, and the people down there say, you understand, I heard from, uh, some kind of evidence that I heard, you understand, it was some Spanish dude, you understand, who did it, so now, really, you understand [83] me, I don't, I don't really know who, you understand, really who did it, but I—I heard like you said before, I too, I heard some names in the street, just, you know, boom-bam, you know how people talk."

Do you want me to continue?

Q. You just read.

A. That was your answer.

Q. Now, that refers I told you who did it?

A. No, it implied to me that you have information concerning it.

Q. Just the information what I hear on the street, hearsay information, Mexican, what I say Mexicans, brothers, it could have been anybody.

A. That was your answer.

Q. Right. Okay.

So then you took me—did I tell you any time when I left the place after I gave my statement I wasn't involved directly as you say and when I left the police station and I didn't say I was involved or nothing, but then you did—you tell me any time that I said I was going to call you back and talk to you—did I tell you any time—well, I'm going to call you back and talk to you?

[84] A. No.

Q. I say that?

A. No.

Q. Did I tell any police officers that?

A. Not to my knowledge. Not in my presence.

Q. Mr. Bunting, did you investigate—was you on the detail of the homicide in October 9th of 1974?

A. I was.

Q. Was you on the scene of the crime?

A. I responded to the scene, yes.

Q. Did any time that—did you speak to anybody around the scene of the crime that night?

A. Yes, I did.

Q. people?

A. People.

Q. Right.

A. Yes, I did speak to some people.

Q. Did anybody around the bar have eye witnesses that didn't you ask did anybody know anything about the robbery around the residence?

A. Did—

Q. You questioned people around the residence, a robbery occurred, even a murder—you didn't question nobody about it?

[90] County Attorney.

(Noon recess.)

THE COURT: Call your next witness.

MR. LINGEMAN: I'd like to call Sgt. Bunting.

THE COURT: All right.

MR. LINGEMAN: If I could show Court and counsel Exhibit 3 again.

THE COURT: Show it to counsel and if there's any objection I'll look at it.

MR. LINGEMAN: I'll remove to admit Exhibit 3.

THE COURT: It's been admitted. I didn't make any different ruling.

MR. LINGEMAN: Okay.

LARRY BUNTING,

the witness herein, resumed the stand and testified further as follows:

**DIRECT EXAMINATION (Cont.)**

BY MR. LINGEMAN:

Q. Okay.

Let me show you what has been marked as 4-A for identification, State's 4-A.

A. Yes, sir.

[91] Q. Do you recognize that?

A. Yes.

Q. What is that?

A. It's a casette copy of the statement made by Mr. Edwards.

Q. The copy that's already been marked as State's 4 for identification.

A. That is correct.

Q. Was that just done over the noon hour?

A. Yes, it was.

MR. LINGEMAN: I'd move to admit 4-A, Your Honor.

THE COURT: All right. 4-A will be admitted and the Court will change its ruling and 4 is not admitted.

Q. (By Mr. Lingeman) Could you play this for us, Detective Bunting?

A. Yes.

(Whereupon, the tape was played for the jury.)

Q. (By Mr. Lingeman) Thank you, Sgt. Bunting.

You indicated earlier today that when you arrived on the scene of the La Conga Bar that Mr. Mongia, Sr. was on the floor; is that correct?

[93] MR. LINGEMAN: Okay. That's all the questions.

THE COURT: You may cross-examine again.

**CROSS-EXAMINATION (Cont.)**

BY MR. EDWARDS:

Q. Mr. Bunting, after I gave you that taped statement and told you I was—I had an alibi, when you arrested me

was I with—did you find out I was with the same young lady that you arrested me at the same house that day?

A. According to your statement that is correct.

Q. And after I told you, after I told you she was my alibi witness did you go and question her about it?

A. No, I did not.

Q. When you took me to jail, police officers took me to jail and put me in solitary, did any time I ask you, your police officers to or did you when I left did I want to talk to you all further after I made that statement?

A. I don't know what you said to anybody else. To my knowledge you did not request to talk to me additionally.

[94] Q. Was you over the case at that time?

A. I was the supervisor of the homicide detail, yes.

Q. You still—you still in homicide?

A. No.

Q. When the time when you was on the scene of the crime did you contact Dr. Brucker yourself?

A. I believe I had the dispatcher get ahold of him.

Q. You and Dr. Brucker was there at the scene, you and Dr. Brucker was there then at the same time; am I correct?

A. Yes.

Q. That night on October?

A. He responded to the scene and observed the scene and the body of Mr. Mongia.

Q. Right. He observed the body.

A. Yes.

Q. Did you observe the body too?

A. Yes, I did.

Q. Did you come to the conclusion of the death of the body?

A. Come to the conclusion that the body was dead, yes.

Q. I mean, that the death was a murder, [101] thank you.

MR. LINGEMAN: Detective Marmion.

THE COURT: Any other witnesses here besides Detective Marmion?

MR. LINGEMAN: Not that I know of.

THE COURT: It's just easier to put them under the rule at once.

VICTOR MARMION,

the witness herein, being called and previously sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. LINGEMAN:

Q. Please, state your name and occupation.

A. Victor Marmion, homicide detective, Tucson Police Department.

Q. How long have you been so employed?

A. A police officer approximately ten and a half years. As a homicide detective almost four years.

Q. Did you have occasion to become involved in the investigation of the armed robbery, murder, armed robbery of the La Conga Bar?

A. I did.

Q. Was that back in 1974, October of '74?

[102] A. Yes, sir.

Q. Did you respond to the scene on the night the incident occurred?

A. I did.

Q. Did you follow the investigation from then until the present time?

A. I did.

Q. Can you tell me what you did on the night that the incident occurred as far as investigating the crime?

A. Well, I previously looked over the scene and my assignment was to interview the second victim, Mrs. Esparza, Nellie Esparza.

Q. Did you interview her?

A. I did.

Q. Okay.

You said you also looked over the scene, is that correct?

A. Briefly, yes, sir.

Q. And at a later time did you also look it over again?

A. I did.

Q. Did you ever look for some bullet holes in the building?

A. We did. I say "we," I mean, Mr. Mongia, Jr. and myself.

[103] Q. Did you ever find any bullet holes?

A. No.

Q. Can you describe the inside of the bar?

A. Well, it's an older type building. They have some booths in the front area of the bar. There's a regular bar counter, pool tables.

There's a room in the back where they store beer and then there's a small office, men and lady's restroom, and that's basically it.

Q. You said you looked for some bullet holes and you didn't find any; is that correct?

A. Correct.

Q. You saying there weren't any bullet holes in the bar then?

A. I'm not saying there weren't any. It was hard for us to tell. It was an old building that has quite a few cracks and holes in the walls so it's hard for me to say one way or the other.

Q. You did look it over and didn't find any?

A. That's correct.

Q. What steps did you take to investigate this in the following days, days following the robbery?

[104] A. Well, I spoke to different investigating officers. I followed up on the investigation as a standard procedure. Spoke with informants. I spoke with people on the street. I went back to the scene, spoke with the victim's family.

Q. Did you ever get anywhere as far as any suspect following the robbery, say, for the first few months following the robbery?

A. Well, a suspect was first brought to my attention approximately shortly after the murder.

Q. Who would that be?

A. I had contact with one of the suspects on the—I believe it was the 11th of October, '74, two days after the murder and that was Manny Soto.

Q. Why did you get in touch with him?

A. Because I was told by an informant he was involved in the La Conga Bar case.

MR. EDWARDS: Objection, hearsay, Your Honor.

THE COURT: Sustained and I'll strike the witness's answer and the jury is to disregard the answer.

Q. (By Mr. Lingeman) Did you contact [105] anyone else who you later learned to be involved in the robbery?

A. Yes, on I believe it was the 11th of September '75. Kevin Reed.

Q. Okay.

That was when?

A. I believe it was the 11th of September of '75.

Q. Okay.

Now, how did you happen to come into contact with Mr. Reed?

A. I was contacted at the Detective Division I believe it was by Mr. Harold Higgins of the County Attorney's Division.

Q. What was that in reference to?

MR. EDWARDS: Objection, Your Honor, hearsay.

THE COURT: Sustained.

Q. (By Mr. Lingeman) Well, you got in touch with Mr. Kevin Reed, Cleveland Reed?

A. I subsequently did, Yes.

Q. Sometime in '75?

A. That's correct.

Q. Do you remember the exact month—are you sure about the exact month or date or are you just giving me your estimate or what?

[106] A. Pretty sure it was the 11th of September '75.

Q. Okay.

Now, did you have a conversation with Mr. Reed?

A. I did.

Q. Did Mr. Reed—what had Mr. Reed been apprehended for?

A. He was being held on unrelated charges, one of which I believe was grand theft. I don't recall what the other charges were.

Q. Okay, charges not as serious as these we're talking about with the La Conga Bar robbery?

A. If we're talking about murder I would have to say no.

Q. What did Mr. Reed indicate to you when you talked to him?

A. He stated that he was one of the five people involved in the La Conga incident. He named the other four persons involved.

Q. Well, prior to the time that he gave you this information did he indicate to you that he had some information about the La Conga Bar robbery, that he wanted to deal or anything like that?

MR. EDWARDS: Objection, leading and [107] hearsay.

THE COURT: Overruled. You may answer the question.

THE WITNESS: I didn't have—

THE COURT: Yes or no—do you remember the question?

THE WITNESS: No, sir.

Q. (By Mr. Lingeman) Okay.

I want to get the initial conversations that were had with—before any details about the La Conga Bar robbery, was there a deal made with him to get him to give you information?

A. There was through the County Attorney's Office.

Q. Okay.

Was it your understanding that he was going to have immunity for any of the charges that arose out of the La Conga Bar robbery?

MR. EDWARDS: Objection, leading.

THE COURT: Overruled.

THE WITNESS: Yes, that was my understanding.

Q. (By Mr. Lingeman) Okay.

After this deal was made did he relate—give to you information regarding the La Conga Bar?

[108] A. He did.

Q. What was that information?

MR. EDWARDS: Objection, hearsay.

THE COURT: Sustained.

Q. (By Mr. Lingeman) Well, he gave you some names; is that correct—I don't want to know what the names were, just want to know if he gave you some names?

A. Yes, he did.

Q. Did you contact some people after he gave you those names?

A. Yes.

Q. Okay.

Ultimately some months later were some arrests made after he gave you those names?

A. Yes.

Q. Was Mr. Edwards also known as Mr. Barefield, Willie Barefield, one of the people who was arrested?

A. Yes.

Q. Okay.

Were you present at the time of the arrest?

A. Mr. Barefield's arrest?

Q. Yes.

A. No, sir. I wasn't.

[109] Q. When was this arrest affected, if you know?

A. I believe he was arrested on the 19th of January of '76.

Q. Okay.

Did you have occasion to speak with him on that particular day?

A. Not on that day. My first contact with Mr. Barefield was on the 20th of January of '76.

Q. Who else was present when you had that contact with him?

A. Detective Milne.

Q. Where did it take place?

A. Pima County Sheriff's Department.

Q. What transpired?

A. Well, Detective Milne and I contacted him at the jail and in one of the attorney's booths as they're commonly referred to.

Prior to any conversation with Mr. Barefield I advised him of his constitutional rights verbatim from the department's standard issued rights card.

He replied in an affirmative manner that he understood his rights and would answer my questions.

[110] He asked me to play part of Manny's—Manny Soto's statement. I proceeded—I did in fact play the tape. I played approximately nine, no more than twelve minutes of the tape.

He then told Detective Milne and myself that he would talk to us, tell us what happened, but he wouldn't give us a taped statement.

Then I mentioned the statement something to the effect: Well, Milne and I could testify to it, we're both here, and

he just said that he didn't want it on tape so we said no and we agreed we wouldn't record it, and then he told us what his part in the crime was.

Q. What did he tell you?

A. He told us that approximately three or four days before the incident which occurred on the 9th of October of '74 that he had gone over to Manny Soto's house and that Kevin Reed and Manny Soto were talking about pulling this robbery off. It was at that time that he decided to go along with them.

On the 9th of October they went to the area of the La Conga. I say "they," the other four subjects.

They staked out the bar. When the two victims, Mr. Mongia and Mrs. Esparza walked [111] out of the bar Mr. Barefield and Kevin Reed approached both of them and they were forced back into the bar at gunpoint.

According to Mr. Barefield Kevin Reed was the only one that had a gun.

The two victims were taken back inside the bar and Mr. Barefield stated he did not hurt Nellie or rob her, take her money, and sometime shortly thereafter he heard two or three gunshots from Kevin Reed's gun, and he said something to the effect that the gun went off because it had a hair trigger on it.

Shortly thereafter Mr. Barefield took Nellie Esparza into the back room where Kevin Reed had Mr. Mongia.

As they, Mr. Barefield and Mrs. Esparza went into the back room, Mr. Mongia was sitting on the chair bent over opening the safe and being held at gunpoint by Kevin Reed.

They took—a wallet was taken, the victim's ring, and money box, and I believe two money bags, and shortly thereafter they ran from the scene and then I asked him questions about which way they ran and he proceeded to tell me.

Q. Tell us exactly what he told you to the best of your recollection?

[112] A. He said they had run out of the bar east on Williams across Anita Street through a ball park.

I say through a ball park, at the present time I don't know whether they went to the center of the ball park or went around, and they kept running. They ran south on Main, east on Second, and they broke up somewhere in the area of John Springs School, Junior High.

Q. Did he say where they went after they broke up?

A. I believe he did.

Q. Do you recall?

A. I believe he said he went home to his house. I believe he said he was living at Queen and University.

Q. Did he indicate to you whether he had ever met up with the rest of the individuals that were involved in this or not, if you recall?

A. I don't recall at the present time.

Q. Do you have a supplement on this that would cover this statement that was made to you by Mr. Barefield?

A. Yes, I do.

Q. Do you have that with you?

A. I don't have it with me, no.

[113] Q. Where would it be?

A. Well, I've got one in my file, one in police records, and I believe you have a copy of it.

Q. Where is your file?

A. Up in your office.

Q. Would that help you refresh your recollection on this aspect of the statements that were made to you?

A. Yes, if we're going to go into further detail.

Q. Okay.

I don't know that this has been marked or not as an exhibit.

THE CLERK. No.

MR. LINGEMAN: Just a second, Your Honor.

THE COURT: Certainly.

Q. (By Mr. Lingeman) Let me ask you this: After the verbal statement to you, right after the interview did you do anything to record this—I know you had agreed not to record the actual conversation, but did you do anything to help you refresh your recollection such as either recording it, your recollection of it, or writing notes about your recollection of it or anything like that?

[114] A. I did.

Q. What did you do?

A. We first got out of the County Jail and Detective Milne and I got in our police vehicle and I talked into the tape recorder.

Q. Made verbal your recollections immediately of that?

A. That's correct.

Q. Did you later record or in some way get in—get into a supplementary report, this conversation?

A. I did. Later on what I did is I took the tape recording that I had of the details and then wrote it out and then I called in a supplement at a later time.

Q. Okay.

Is State's 5 that's been marked for identification and placed in front of you there, is that a copy of your supplement?

A. It is, but it's not complete. There is a page missing.

Q. Okay.

A. I believe it's the first page.

Q. Is the portion in there that deals with the statements—is this the first page?

A. It is.

[115] Q. Okay.

Could you find the part that deals with the statements in your report?

A. Yes, it's on page 6 of my supplement.

Q. If you reviewed that would it refresh your recollection as to more details about the statements?

A. Yes.

Q. Why don't you go ahead and do that?

A. Okay.

Okay, I have read it.

Q. Does it refresh your recollection as to anything else you haven't told us so far?

A. Well, one thing, yes—about the fact that one of the suspects in the case had gone up to the window of the bar.

Q. He indicated that to you?

A. Yes.

Q. Which suspect that he told you?

A. Manny Soto.

Q. Did he name all of the people that were involved in there?

A. He did.

Q. What names did he give you?

A. Manny Soto. He said Manny also goes by Boy.

[116] Q. This was the person whose tape you already played for him and who had given this statement to you that had to be recorded earlier?

A. That's right.

Q. Who else?

A. Albert Williams, Willie Leroy Williams, and Kevin Reed or Cleveland Reed. He goes by both names.

Q. Okay.

A. Also that Manny pulled the burglary there at the La Conga at one time, was familiar with the safe. Mr. Barefield also described the victim's ring to me.

Q. The ring?

A. That's correct.

Q. Did he indicate to you that a ring was taken from the victim?

A. Yes. That's basically it.

Q. Anything more about where Mr. Barefield went after the robbery was committed?

A. I don't believe so.

Q. What you told us earlier was your best recollection of what he indicated?

A. At the present time, yes.

Q. Okay.

Is that pretty much all the statements [117] as you recall them that he made to you there at the conversation at the County Jail?

A. Later on he asked us to contact him. He wanted to talk to us again after we talked to Willie Williams.

Q. When was this?

A. Sometime during the interview we had with him at the County Jail.

Q. He asked you to contact him again?

A. That's correct.

Q. Go ahead.

A. What it was is we were at the County Jail interviewing Mr. Barefield at which time we were notified that Mr. Williams had been taken into custody, Willie Leroy Williams, and Mr. Barefield asked us what Williams had said, something to that effect.

We told him we didn't know because he had just been arrested. I remember Milne going out of the room and coming back in, and he made some statement that he'd like to talk to us later on.

Q. After you talked to Mr. Williams?

A. Yes.

Q. Did you ever get back together with Mr. Barefield?

[118] A. Yes.

Q. When?

A. I don't recall the exact date. It was several days later.

Q. What took place at that time?

A. He asked us what Willie Williams had said. We asked him again if he would give us a statement. He refused again.

Q. On tape you mean?

A. On tape, yes. It was a very short conversation.

That's basically all I recall at the present time.

Q. Okay.

Up to the time when Mr. Reed was apprehended on those other charges that you have indicated which was some time in '75, did you have further leads in your case or was your case on the La Conga Bar pretty much at a dead end?

MR. BROGNA: Objection, Your Honor, immaterial.

THE COURT: Sustained.

Q. (By Mr. Lingeman) Well, what were you doing on this investigation just prior to the time that you came into contact with Mr. Reed?

A. Nothing much really. We pretty much [119] well exhausted all possible leads.

MR. LINGEMAN: That's all I have.

**CROSS-EXAMINATION**

BY MR. EDWARDS:

Q. State your name for the record.

A. Victor C. Marmion.

Q. Detective Marmion, do you know when I was arrested?

A. I wasn't present. I do believe I know, yes: January 19th.

Q. Did I talk to you January 19th?

A. No, I don't believe so. I saw you in the Detective Division, but I didn't talk to you.

Q. You know I had talked to Detective Bunting here, don't you?

A. I was aware of it, yes.

Q. Did you read the so-called statement, tape recorder statement I made?

A. Later on.

Q. Did you read it before you come to see me?

A. No, I didn't.

Q. You didn't read it?

A. No, I didn't.

Q. Detective Marmion, you stated that you [120] came out to the jail, that I asked to see you, that's the 20th?

A. No, sir. I didn't say that. What I said was Detective Marmion and I contacted you on the 28th. We subsequently contacted you at a later time after the 28th.

Q. Did I ask you to contact me?

A. Yes, you said you wanted to talk to Milne and myself.

Q. Didn't I say when you first came to me, see, I supposedly made this statement, did you contact me?

A. The first time on the 28th, no. I went there on my own accord.

Q. You said I stated to you that me and Reed had a gun and I stated to you that that—then he ran on the ball field after this happened—is this all in my report that you stated?

A. What I have stated is that you said Mr. Reed had a gun. I didn't say that you had a gun.

Q. Well,—what I also indicated as far as the ball field is that at the present time I don't recall if you indicated to me whether you went through the ball park or around the ball park.

[121] Q. Is this in your report there?

A. What is that?

Q. This statement I supposedly made to you, verbal statement?

A. I believe it.

MR. EDWARDS: I'd like to make this an exhibit.

THE CLERK: E.

THE COURT: Exhibit E.

Q. (By Mr. Edwards) Show me, Detective Marmion,

where I ran out after I did the crime in that statement there?

A. I beg your pardon—repeat the question.

Q. Would you read it where I ran after through the ball park and then I ran to my house?

A. I don't see— I don't see ball park in particular, but I do see the direction of travel that the suspect took according to Mr. Barefield was consistent with that Reed had previously told me. I recall you telling me about the ball park.

That's where I covered that as far as the gun—here we go, you indicated to me that Reed was the only one carrying the gun. It's—yes, it's in my report.

[122] Q. Who made that report?

A. I did.

Q. You wrote that report out yourself?

A. I didn't write it. I called it in on a tape recording and then the girls type it up.

Q. Okay.

A. Then it comes back to me and I check it.

Q. Is it signed by me?

A. By you?

A. Right.

Q. No. It's not.

Q. Mr. Marion, when you came out there you said that you never read no—did you have any indication of talking—to talking to a lawyer Poles and Higgins?

A. I don't understand the question.

Q. I'll ask you again.

You had the interview you made with a—my previous attorney Poles and Tom Higgins, do you remember that a—that statement you gave to them?

A. I remember I had a conversation with the gentlemen.

Q. You don't remember the statement, though?

A. Do I remember the statement?

[123] Q. Yes.

A. Yes, I remember giving them a statement, yes.

Q. You don't remember—you don't remember like I asked you before ever reading my statement before you came out to see me, you never did that?

A. I don't recall reading your statement, no.

THE COURT: Exhibit F.

Q. (By Mr. Edwards) That might refresh your memory, Mr. Marmion.

A. What is it you want me to read?

Q. So you can—you say you don't recollect—refresh your memory the statement you made, Detective Marmion?

A. What in particular?

Q. Referring to you don't—you didn't read my statement I made to Bunting before you came out and contacted me, come out there to contact me to make another statement?

MR. LINGEMAN: Could we have a page or line number—that's fairly lengthy.

THE COURT: You have a page or line?

MR. EDWARDS: Yes, I'll do that. Page three.

[124] THE WITNESS: It's okay. What is your question.

Q. (By Mr. Edwards) I just asked now—I ask you again: Do—did you ever come in contact with Bunting before you came out and looked over the statement, you didn't read it, but you looked over it, you know I had made a statement before you came out?

A. As I stated, I don't recall at the present time. I don't remember.

Q. But you don't remember saying that?

A. No, I don't.

Q. Number three, line three:

"Detective: Uh, no, I just briefly, very briefly read over the statement that he gave the two Buntings.

"Tom: Okay. So it was already transcribed?

"Det.: Yes, right.

"Tom: Okay, before you had any personal contact with him?

"Det.: Right, that, I didn't read his statement till later on.

"Tom: Oh, I see."

That was you saying that, that was you, Detective Marmion?

[125] A. I'm telling you I don't remember.

Q. You don't remember.

A. I don't remember making that statement. I don't remember answering that.

Q. How do you remember, then, that statement you made—said I made to you if you don't remember making this?

A. You just confessed to murder and robbery. It sticks in my mind. I don't forget major facts like that. I have testified numerous times in this trial and I figure I might forget little things, but I won't forget the major things.

Q. You forget little things that you say in other statements, but then you don't forget you making up another statement and putting it on tape, and then you saying I didn't even ask to see you, then you trying to say that you came down, didn't know that I had talked to Sgt. Bunting, yet; is that right?

A. I believe you're making a statement. I don't know if you're asking me a question.

Q. I'm asking you, Sargeant Detective Marmion, that you transcribed that statement; am I correct?

A. No, I didn't. I never told you that.

Q. You wrote that statement out yourself?

[126] A. I never wrote it, never wrote any statement. I made my police report, my supplement, but I had nothing to do with Sgt. Bunting's statement.

Q. You didn't know about Sgt. Bunting's statement when you come out to talk to me?

A. I know that Bunting had talked to you, yes, but I indicated I don't remember at the present time making the statement.

Q. You don't remember a lot of things, Sargeant—

MR. LINGEMAN: Objection, argumentative.

THE COURT: Sustained.

Q. (By Mr. Edwards) Sgt. Detective Marmion, when you came out on the 20th did your sargeant send you out there to talk to me?

A. No, sir, he did not.

Q. At any time Sgt. Bunting ask you to come see me?

A. No, I was the chief investigator in the case. It was my case.

Q. You came out to there—out there to talk to me?

A. That's correct. I went out there on my own.

Q. So then you—I was—then how did I approach to the attorney, I know that he was [127] there, and then he just ran to see that you was there to come where I was at.

Q. We were in the attorney booth and you walked in?

That's when I made the statement to you that—that statement you got right there.

A. After I advised you of your rights, yes.

Q. Right.

You didn't play another statement, you say I wanted you to play another statement?

A. No. I stated that you asked me to play Manny Soto's statement. You never asked me to play another statement.

Q. How long did you play Manny Soto's statement?

A. Approximately nine, no more than 12 minutes.

Q. Then you—then that's when I gave the verbal statement?

A. You eventually did, yes.

Q. That's when you said to me that you noticed me, and the other detective standing here—anything you say can be held and used against you?

A. Yes.

[128] Q. But I still gave you a verbal statement knowing that it could be used against me?

A. Yes.

Q. Did you know where I was in the jail, Sgt. Marmion?

A. No.

Q. I know you had to know where I was.

A. I can only say you were in Pima County Jail.

Q. You don't know that since the—after Bunting took me out I had made—gave them my story, then I didn't ask you all to come see me then you know I was put in solitary and I was pulled out of solitary to come see you.

MR. LINGEMAN: Objection, these facts are not in evidence.

THE COURT: Sustained.

Q. (By Mr. Edwards) So then you came down there to see me; am I correct?

A. I have went down there to see you on my own accompanied by Detective Milne.

Q. Nobody asked you to come see me?

A. No one asked me.

Q. Did I ask you to come see me?

A. No, you didn't, not then.

Q. Do you remember what time of morning [129] that was?

A. I do.

Q. Could you tell the Court what time?

A. Approximately 9:15.

Q. Do you know what time do people go to arraignments and see lawyers?

A. I do.

Q. What time was that?

A. Approximately 1:30.

Q. Do you have a morning court or afternoon court for arraignments?

A. To my knowledge initial appearances are approximately 1:30 every day.

Q. I mean arraignments, not initial appearance.

A. I don't know.

Q. You came down there about 9:30 to come see me; am I correct?

A. No, sir.

I stated I had contacted you approximately 9:15.

Q. Then I come in with you in a booth to talk to you, I come to talk to you and another police officer, is that what you're saying?

A. That's correct.

Q. Is that in your supplement, Sgt. Marmion?

[130] A. We contacted you.

Q. No, that you—that you come out to talk to me and I was ready to talk to you, is that in your supplement?

A. I indicated in my supplement that we contacted you on the 20th at 9:15 and you did talk to us.

Q. Did you take notes when I was giving a verbal statement?

A. No, I don't believe I did.

Q. You didn't know—you didn't take notes?

A. No, I didn't.

Q. You remembered it in your head and then wrote it down on a piece of paper?

A. No, what I indicated was that I didn't take notes. I put it in the tape recorder and then transferred it onto my notes, and then called my supplement in and then checked my supplement.

Q. Is that your supplement there?

A. It is.

Q. This here?

A. This one here, that's a page of my supplement, but this isn't the complete one.

Q. But this is your supplement that you made?

[131] A. That's a page of my supplement, yes.

Q. Now, you don't remember when you made this statement to Poles and Tom Higgins, you don't remember talking to them; am I correct?

A. Yes, I do remember talking to them. I have stated I did, yes.

Q. You have said that you told them the same thing that you was telling, you was telling the court, you told them the same thing you—that you testifying today here?

A. No, I never made that statement, no.

Q. But you told them basically what I talked to you and mostly you told them the truth, didn't you, Sgt. Bunting—Sgt. Detective Marmion?

A. When I spoke with Mr. Poles and the other gentlemen I have spoken the truth throughout the case.

Q. No, I'm talking about when you were talking to attorneys at law you was telling the truth; am I correct?

A. You bet I was telling the truth.

Q. When you do not remember—I must get you to remember this statement, Detective Marmion, mostly that you made how you got in contact with me, how you then come to the jail, how you down here you told them how I made a statement to you.

[132] MR. LINGEMAN: Object to Mr. Edwards' reading from the statement. If he wants it in evidence, he can put it in evidence but—or ask questions. He's reading parts and missing parts.

THE COURT: I'm not sure.

Would you give me the question so far, please, Mr. Sipes, and everybody be quiet.

(The Reporter read back.)

THE COURT: Overruled. You may finish—

MR. EDWARDS: I'll start over.

Q. (By Mr. Edwards) Like I was saying, Det. Marmion, mostly this statement it was that you was, you know, that you told the truth to the same things mostly you testifying because my attorneys asked you about mostly me when you come to contact me, told me when you did come to the jailhouse and things like that, do you remember them questions or no?

A. If I understand your question right, I have indicated that I did talk to your attorneys. I did make a statement.

Now, that particular section that you refer to is what I'm saying that I don't remember, but I did make a statement to your attorneys. I did talk to them, yes. I never said I didn't.

Q. At any time, Detective, Tom Higgins state down here you don't think I was telling the truth

[133] Would you give me the question so far, please, Mr. Sipes, and everybody be quiet.

(The reporter read back.)

THE COURT: Overruled. You may finish your question—or you can start over again.

MR. EDWARDS: I'll start over.

THE COURT: Okay.

BY MR. EDWARDS:

Q. Like I was saying, Detective Marmion, mostly this statement it was that you was, you know, that you told the truth to the same things mostly you testifying because my attorneys asked you about mostly me when you come to contact me, told me when you did come to the jailhouse and things like that, do you remember them questions or no, Detective Marmion?

A. If I understand your question right, I have indicated that I did talk to your attorneys. I did make a statement.

Now, that particular section that you refer to is what

I'm saying that I don't remember, but I did make a statement to your attorneys. I did talk to them, yes.

I never said I didn't.

Q. At any time, Detective, Tom Higgins state down here you don't think I was telling the truth [134] with the statement you got to me?

MR. LINGEMAN: Objection, page and line.

THE COURT: All right. Sustained.

Furnish that information to Mr. Lingeman.

MR. LINGEMAN: Objection, Your Honor, unless he reads—

THE COURT: Just a minute. Don't argue it in front of the jury.

I'll have to see it in order to rule on the objection.

Is it the portion that you have the lead pencil by here?

MR. EDWARDS: What?

THE COURT: Is it the part that you have got the lead pencil?

MR. EDWARDS: I was trying to, yeah, circle around from the top. It was up on most of the top all the way down.

THE COURT: Do you object to this?

MR. LINGEMAN: Yes.

THE COURT: Sustained. It doesn't appear to be inconsistent.

MR. EDWARDS: Right here, Detective,—it says this.

THE COURT: Continue question by Mr.

(CAPTION OMITTED)
**PROCEEDINGS APRIL 22, 1977**

**A-30683**

[3-120]

CHARLES MILNE,

was thereupon called as a witness in behalf of the State, and being first duly sworn, was examined and testified as follows:

THE COURT: The witnesses in this case are under the rule, Detective, so you can't be in the courtroom except when you are testifying.

In addition, you can't discuss your testimony with anyone other than the attorneys until the case is finished. Thank you.

**DIRECT EXAMINATION**

BY MR. LINGEMAN:

Q. Please state your name.

A. Charles Milne.

Q. And your occupation?

A. Detective, Tucson Police Department.

Q. How long have you been so employed?

A. Ten years.

Q. Have you ever been in the Homicide Detail?

A. Yes, I have.

Q. When was that?

A. September '75 through September of '76.

[3-121] Q. Okay. During that year at sometime did you have occasion to be involved in the investigation of the La Conga Bar robbery?

A. Yes, I was.

Q. Did you accompany Detective Marmion on—in January of 1976 to the Pima County Jail and there witness a conversation with Robert Edwards, also known as Willie Barefield?

A. Yes, I did.

Q. Do you see that person in the courtroom?

A. Yes.

Q. Would you point him out, please.

A. The gentleman sitting at the defense table in the blue shirt to the right of Mr. Brogna.

Q. How did it happen you went along with Detective Marmion?

A. Detective Marmion was going out to interview Mr. Barefield and I accompanied him. I was in the detail a short period of time at that point. It was as well as an educational process for myself.

Q. Were you that familiar with the details of the La Conga Bar robbery or not?

A. Not as familiar as if it had been my case to begin with. I was aware of some of the circumstances that happened, but not fully aware [3–122] of the entire investigation, no.

Q. Do you remember what took place at the Pima County Jail?

A. Detective Marmion interviewed Mr. Edwards.

Q. Okay. What was the first thing that happened when Mr. Edwards came in the room?

A. Detective Marmion advised Mr. Edwards of his rights.

Q. And did Mr. Edwards indicate he understood his rights?

A. Yes, he did.

Q. Did he indicate he would talk with you?

A. Yes, he did.

Q. What was done then?

A. Mr. Edwards indicated he would talk to Detective Marmion, but first he wanted to hear a tape that was produced by Mr. Soto, who was also involved in this incident.

Q. Was the tape played for Mr. Edwards?

A. Yes.

Q. The whole tape or part of it?

A. I'd say approximately ten minutes or so.

Q. Then what happened?

A. Detective Marmion asked Mr. Edwards [3–123] if he would give a taped statement concerning his involvement in the incident under investigation.

He indicated he did not want to give a taped statement due to the fact that it could be used against him in court, but he would verbally tell us what we wanted to know.

He was instructed at that point by Detective Marmion that anything he said to us would be used in court even though it wasn't on tape.

Mr. Edwards indicated that he understood that, but he would—just did not want his voice put on tape.

Q. Was a conversation then had reference the La Conga Bar robbery-murder?

A. Yes.

Q. Can you tell me, to the best of your recollection, what Mr. Edwards told you about his involvement in the crime?

A. Mr. Edwards indicated to Detective Marmion and I that he had been at Manny Soto's house two or three days prior to the robbery at the LaConga Bar. A Mr. Reed and Mr. Soto were discussing pulling the robbery at the bar at which time he decided to go along.

The night of the robbery he, Mr. [3–124] Reed, Mr. Soto and the Williams brothers went to the LaConga Bar.

Mr. Soto had looked in one of the windows of the tavern to see where Mr. Mungia and Nellie Esparza were located when the bar closed and those two people attempted to exit the bar. They were confronted by Mr. Edwards and Mr. Reed.

Mr. Reed, according to Mr. Edwards, was the only one that had a weapon.

And they were forced back inside the tavern.

The other three individuals acted as lookouts, according to him.

Once inside the tavern, Mr. Reed forced Mr. Mungia to the rear or office portion of the tavern and a short time later he proceeded—or this being Mr. Edwards—proceeded to take Miss Esparza back into the same office.

Once inside the office area, according to Mr. Edwards, Mr. Reed was advising Mr. Mungia, or threatening Mr. Mungia to open the—open the safe, which they knew was in the office due to Manny Soto had completed a burglary at that location on an earlier occasion.

And I believe a money bag or box was taken out of the safe as well as the personal [3–125] effects from Mr. Mungia, this being a ring and a wallet but I'm not sure if there was a watch involved or not.

Mr. Edwards indicated that once they got these items from Mr. Mungia they split out the front door and started to run.

Q. Did he say anything about what happened after they left the business?

A. They caught up to the other three individuals that were outside, this being the Williams brothers and Mr. Soto, and then all ran to their respective residences.

Q. Is that pretty much the conversation you recall this man making in your presence and in the presence of Detective Marmion?

A. Yes, it is.

MR. LINGEMAN: That's all the questions I have.

THE COURT: Cross-examine.

MR. EDWARDS: Do you have the statement and exhibit?

**CROSS-EXAMINATION**

BY MR. EDWARDS:

Q. Will that refresh your memory, Mr. Milne?

[3–126] A. Pardon?

Q. Will that refresh your remembering? You said I stated in the part about the wallet and other types jewelry

and then I ran out and we caught up with the people and then I ran to my residence.

Did I say that in the report, Mr.—

MR. LINGEMAN: Could we have some clarification as to whose report this is.

THE COURT: Yes.

Q. (By Mr. Edwards) Does it say this in the report?

THE COURT: I sustained the objection because we don't know whose report it is.

Q. (By Mr. Edwards) Where is your report, Mr. Milne?

A. I did not make a report reference the conversation you had with Detective Marmion.

Q. So you didn't take no report.

A. No, sir. Detective Marmion did that.

MR. EDWARDS: I mark this an exhibit.

(Whereupon, Defendant's Exhibit L, a Police Report, is marked for identification.)

Q. (By Mr. Edwards) I show you the report of what you said on the stand, Mr. Detective. That's your report there?

[3-127] A. Yes, this is.

Q. Does it have the same thing you testified on the stand?

A. As I said before, Mr. Edwards, I did not make a report of the conversation Detective Marmion had with you. Detective Marmion did that.

Q. Mr. Milne—

A. Yes.

Q. —Detective Milne, I don't see how could you interview me January 19 because January 19 Detective Bunting interviewed me.

A. I never said I interviewed you on January 19th.

MR. EDWARDS: Oh, yes. Your Honor, I would like the court reporter to go back to what Mr. Lingeman said on

January 19th that they went down to the County Jail and he testified I did. I think it was on the court reporter, back to Lingeman's cross-examination.

MR. LINGEMAN: Your Honor, maybe he is concerned because I said January 1976.

THE COURT: You want the court reporter to read a question back?

MR. EDWARDS: Yes, a question that Mr. Milne came out to the jail house on January 19, 1976, and he could not have interviewed me on [3–128] January 19th, 1976, because I was interviewed by the Buntings January 19th, 1976.

THE COURT: We can look for that during the recess.

MR. EDWARDS: I don't have no more questions until I get that.

THE COURT: Do you have any redirect?

MR. LINGEMAN: Not now, Your Honor.

THE COURT: Ladies and gentlemen, we'll recess at this time.

Keep in mind the admonitions that the Court has previously given to you.

(Whereupon, the jury retires at 2:45 p.m. and the following proceedings were had, to-wit:)

THE COURT: Mr. Lingeman, when we get back your objection to the question will be sustained.

MR. LINGEMAN: That means we are through with Mr. Milne?

THE COURT: You are through with Mr. Milne?

You're resting, then.

MR. LINGEMAN: Yes, Your Honor.

THE COURT: When the jury returns the State is going to rest, so I'll now hear anything you have at the time the State rests.

(CAPTION OMITTED)

**PROCEEDING APRIL 25, 1977**

**A-30683**

[4-117] LARRY BUNTING,

was thereupon called as a witness in behalf of the defendant and, having been previously duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. EDWARDS:

Q. State your name for the record.

A. Larry Bunting.

[4-121] I think you was—you and I think Steve Bunting arrested me, am I correct?

A. That is correct.

Q. And you took me down to the police headquarters, am I correct?

A. That's correct.

Q. I made what you called a homicide alibi statement, am I correct?

A. I wouldn't just call it a homicide.

It's what is considered an alibi statement.

As you phrased it, you wanted to make an alibi statement.

Q. Did I make an alibi statement voluntary?

A. Yes.

Q. And I guess you take that alibi statement taped; is that correct?

A. Correct. As you'll remember I played it here the other day in the jury.

Q. When you arrested me, Sgt. Bunting, did you have the address where you arrested me from?

A. I did at the time. I believe it was [4-122] 1022 East Twenty-Fourth. I'm not sure of the exact address, but I believe that was it.

Q. Do you know who was living there?

A. At the time?

Q. Yes.

A. Not for certain I did not know at that time.

Q. And you mean you come to arrest a person and you did not know who lived there, Sgt. Bunting?

A. I was not certain that you would be there until I found you there.

Q. So if you—who did you know lived there, if you knew that you would probably find me there, Sgt. Bunting?

A. The information was that it was Willie Williams' sister lived there and there was a possibility that you would be there with her.

Q. So you knew that I was staying with Mrs. Williams, is that correct, is that what you're telling me?

A. No, I didn't say that. I knew you were staying there with her. The information was that you would probably be there.

Q. But you knew she was staying there.

A. No, I did not know that at that time because all possibilities—it was the information [4–123] that she was staying there.

Q. Dr.—Sgt. Bunting, when I gave you what we call alibi statement, and you said after I gave you alibi statement that then—I have a question before alibi statement.

Now, when I came to the interrogation part, at anytime did you play a statement, I think it was Reed's or the statement to me?

A. Yes, part of it was related to you.

Q. And you said a person involved in a crime, am I correct?

A. As I stated previously, Kevin Reed and Soto had previously given statements implicating you and you were apprised of this fact and you stated that you had an alibi and wanted to make an alibi statement.

Q. When you told me that Reed had—had implicated my name, and I told you I would make a statement and tell you what I know; is that correct?

A. That is correct.

Q. And I made that statement voluntary.

A. That is correct.

Q. And after I talked to you, after the statement was over, then you testified that I asked for a lawyer to make a deal, am I correct?

[4–124] A. Not in those words.

You asked to make a deal. You asked to make—

Q. No, I didn't ask—

A. —contact with the county attorney.

Q. You have to answer questions and I asked—

MR. LINGEMAN: Your Honor—

Q. (By Mr. Edwards) Did I ask to make?

THE COURT: Let him finish his answer.

THE WITNESS: When no deal was made, you left with the idea that you were going to get an attorney to make a deal for you, which I considered to be different from you wanting an attorney at that point to make a deal for you.

Q. (By Mr. Edwards) Now, Mr. Bunting, when I said I was going to—you—you stated that I said—do you have that on the tape recorder, Mr. Bunting?

A. No.

Q. I know you have. Do you have it—you had whatever I told—when you interrogated me you had that on tape statement.

A. You heard your statement and that's the only thing that was on tape.

Q. You're not answering my question, Sgt. [4–125] Bunting.

I'm asking did you have that on tape?

A. Your statement is on tape. Our conversation about the deal and back and forth general conversation is not on tape.

Q. So anytime what you saying that our conversation led to, so anytime I said to myself that I know that I'm—I'm involved in this crime and my involvement, did I tell you my involvement in the crime? How long did we talk, Sgt. Bunting?

A. Our total time together was approximately three hours.

Q. Okay.

A. Then part of your question was what did you say to yourself? I missed the first part of your question.

Q. I asked you what you testified before Sgt. Bunting.

At anytime did I tell you in the three hours that we talked that I was involved in the crime at the LaConga Bar?

A. Not directly.

Q. I can't ask you—I can't—what you mean not directly?

Sgt. Bunting, I want you to say yes [4–126] or no. If you know that I was involved, tell me my participation, tell the Court was I involved or was I not involved, that's the question I'm asking.

A. I can best answer that by stating that you indicated you had information, knowledge, but you did not relate the exact information or knowledge. You wanted a deal first.

Q. You still ain't answering my question, Sgt. Bunting.

I'm asking you is—do you have that in your taped statement that you're talking about?

A. No. As I said previously this was conversation that came about after your taped statement.

Q. Then did I tell you at anytime that I was involved in a crime?

A. Not directly.

Q. When I left did I tell you I was involved in any crime?

A. No, sir, not directly.

Q. I can't understand what you're saying Mr. Lingeman (sic), not directly. You misinformed the Court that answer you giving, Sgt. Bunting.

What—if you can tell the Court [4–127] what participation I told I was in and then you can say directly, not directly, but I can't understand, Mr. Bunting, you're misinforming the Court.

MR. LINGEMAN: Objection, Your Honor. Argumentative.

THE COURT: Sustained.

Q. (By Mr. Edwards) Did I tell you—I will answer a question like this and give you a answer like this.

Did I tell you my participation in any crime?

A. No.

Q. Crime?

A. No.

Q. Did I put myself there?

A. Did you put yourself there?

Q. Right.

A. No.

Q. Right. I told you I know who could tell you where I was, am I correct?

A. What time are we talking about?

Q. The same—the same day. We didn't talk no further. The same day I made my involvement in no crime, did I tell you who could cooperate with my story?

A. Your alibi?

[4–128] Q. Yes. Who did I state?

A. Willie Williams' sister. I don't recall her first name.

Q. You knew I was staying with her; is that correct?

A. I didn't know that until you told me and I didn't know that I would find you there until I found you there.

Q. When you found me there you knew that I was staying with Mrs. Williams.

A. At that particular moment you were there at Mrs. Williams' house.

Q. When I left and went down to interrogation I told you that she could testify—she could tell you where I was and I left. You knew where she was; is that correct?

MR. LINGEMAN: Objection.

MR. EDWARDS: You wouldn't—

MR. LINGEMAN: I'm sorry. I thought he had finished the question.

THE COURT: Finish the question.

Q. (By Mr. Edwards) I saw you knew where she was where you could go and find out. Where you go. There wasn't nothing you had to go search.

A. That's absolutely correct.

Q. You could go right then and find out.

[4-129] A. Yes, I could have.

Q. Did you go and find out?

A. No.

Q. Now, after I left, Mr. Bunting, to the jail house, did you come in contact with me again?

A. No, I didn't.

Q. I have one more question for you, Sgt. Bunting.

You stated to the Court that anytime when I asked for a lawyer, referring to the lawyer to make a deal which you say, did you stop questioning me, Sgt. Bunting? Did I leave from there?

A. You never requested an attorney present at the interview. You wanted to talk to the county attorney, which you did.

I remember the county attorney's office. When no deal was made, you left stating, "I'm going to wait until I get an attorney to make a deal for me. I'm not going to make a deal now. I'm not going to make a statement now. I'm going to wait until I get my attorney."

That's the way it was left. That's all the discussion we had about it.

Q. I didn't ask you—I think you are still

misleading—did I ask for a attorney to [4-130] make a deal did you stop questioning me?

A. No, because the only attorney you asked for was the county attorney and you never requested an attorney for yourself.

Q. Is this your report, Sgt. Bunting?

A. Yes, it is.

Q. I must put that in evidence.

THE COURT: We'll have it marked as an exhibit.

(Whereupon, Defendant's Exhibit R is marked for identification.)

MR. EDWARDS: I must have it marked as evidence.

Q. (By Mr. Edwards) Sergeant, that's your report, Sgt. Bunting?

THE COURT: That's Exhibit R.

THE WITNESS: I have read the report.

Do you want me to read it to the jury or what's your desire?

Q. (By Mr. Edwards) What is your desire, Sgt. Bunting? I'm asking you about the deal.

THE COURT: Now, just a minute. He has read the report. Do you have a question?

MR. EDWARDS: Yes, I have a question of the attorney.

Q. (By Mr. Edwards) Don (sic) Polis [4-131] supposed to make a deal. I don't see now other question that he stated in his report, it was not in his report.

After I asked for a attorney to cause to make a deal, I was—I was sent quickly to the—back to the jail and the charge was murder and armed robbery.

MR. LINGEMAN: I'm going to object to this narrative of the defendant.

THE COURT: Sustained. You can read word for word from the report and ask him if that's in his report if you want to do it that way.

MR. EDWARDS: Yes. I would like to read it to the Court.

Q. (By Mr. Edwards) "The subject Barefield was read a portion of Calvin Reed's statement showing that Calvin Reed had implicated him. At one point Barefield stated he was going to make a statement and then he changed his mind and stated that without a deal he was not going to make a statement. He would wait for his attorney to make a deal.

"Then subject Barefield was transported to the County Jail on a warrant charging him with murder, armed robbery and armed burglary."

Now, Sgt. Bunting, you said that [4-132] after I had asked for attorney to make a deal in your words and then questioning continually, is that what you said?

A. It's not my interpretation of my report that you ever requested an attorney with the exception of the county attorney. You stated, "I'm going to wait until I get my attorney to make a deal for me," which is different than requesting an attorney at that point.

Q. If I request my attorney you think my attorney was the district attorney, is that what you say?

A. No. The only attorney that you requested to contact at that point that night, that evening, in your presence, was the county attorney.

And you indicated you would wait until you got your attorney to make a deal for you. That's my testimony and it's my interpretation of my report.

Q. That was your interpretation.

A. That's—that's what it says.

Q. Oh, your interpretation.

MR. LINGEMAN: Your Honor, I'm going to object. Argumentative.

THE COURT: Sustained. Sustained. Let's get on to another subject if you have anything [4-133] further.

Q. (By Mr. Edwards) I have two more questions to ask Sgt. Bunting.

So this was in your interpretation. Did you ever have your—all of this we talked to after I made my alibi statement, I know you all have a thing that when you talk you record.

Do you have that recorded statement?

A. I'm sorry, I don't understand what you're talking about.

Q. Let me make it more plain to you, then, Sergeant.

I know it's a duty to have everything recorded. I mean, that's the homicide thing and I want to know that you had that recorded about the attorney making a deal and so on and get an attorney to make a deal.

I know that everything is recorded. Do you have that recorded?

A. I think what you're talking about is what we call supplemental tapes where we dictate a supplemental record and it's typed from the tape onto paper by a stenographer. Those tapes are used over and over again and are not kept as are statement tapes.

Q. Oh, you have a—you have a recording [4-134] then, am I correct?

A. No, you're incorrect.

Q. Oh.

A. Those tapes that are used over and over again, continually.

Q. So when I left you, Sgt. Bunting, did I ask you again in questioning, did I ever tell you I was involved, did I ever tell you in my words that I was involved in any crime?

MR. LINGEMAN: Objection. Asked and answered.

THE COURT: Sustained.

MR. EDWARDS: Since I can't get any questions I got, I ain't got no more questions.

THE COURT: Mr. Lingeman.

MR. LINGEMAN: No questions, Your Honor.

THE COURT: You may be excused. Thank you.

(Witness excused.)

THE COURT: Would counsel approach the bench, please.

(Whereupon, a bench conference was had out of the hearing of the jury, to-wit:)

THE COURT: Does the defendant have any other witnesses?

MR. BROGNA: Not today.

# Supreme Court of the United States

No. 79-5269

ROBERT EDWARDS, PETITIONER,

*v.*

ARIZONA

ORDER ALLOWING CERTIORARI. Filed May 19, 1980.

The petition herein for a writ of certiorari to the Supreme Court of the State of Arizona is granted limited to Question 1 presented by the petition.

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